

Before the  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Market Test of Experimental Product -  
Metro Post

Docket No. MT2013-1

PUBLIC REPRESENTATIVE COMMENTS IN RESPONSE  
TO NOTICE AND ORDER CONCERNING REQUEST FOR  
EXTENSION AND EXPANSION OF METRO POST MARKET TEST

(October 15, 2014)

I. INTRODUCTION

The Postal Service recently filed a request with the Commission seeking:  
(1) permission to extend the Metro Post market test until December 16, 2015; and  
(2) authority to expand the test to additional test markets during the extension year.<sup>1</sup>  
The Public Representative has reviewed the Postal Service's filings in this docket  
(including information filed under seal). Based on this review, the Public  
Representative generally supports the Postal Service's Request and therefore  
recommends that the Commission grant the Request.

II. BACKGROUND

On October 12, 2012, the Postal Service filed a notice, pursuant to 39  
U.S.C. § 3641, announcing its intent to conduct a market test of the Metro Post  
product.<sup>2</sup> The stated goals of the Metro Post market test were to "test[] the operational  
feasibility of same-day delivery of packages to/from multiple locations" and to "assist the  
Postal Service in determining the optimal pricing structure for this type of  
service." Notice at 1-2. The Commission found that the market test met the

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<sup>1</sup> Request of the United States Postal Service For Extension and Expansion of Metro Post Market Test, September 19, 2014 (Request).

<sup>2</sup> Notice of the United States Postal Service of Market Test of Experimental Product – Metro Post – and Notice of Filing Material Under Seal, October 12, 2012 (Notice).

requirements of section 3641 and issued an order approving the market test on November 14, 2012.<sup>3</sup>

The San Francisco, California metropolitan area was the first location where the Metro Post market test was conducted.<sup>4</sup> The Postal Service later expanded the Metro Post market test to the New York, New York metropolitan area.<sup>5</sup> The market test is set to expire on December 16, 2014.<sup>6</sup> Consequently, on September 19, 2014, the Postal Service filed a request with the Commission seeking an one-year extension of the Metro Post market test pursuant to 39 U.S.C. § 3641(d)(2). Request at 1. The Postal Service is also seeking authority, pursuant to PRC Order No. 1539, to expand the market test to additional markets during the extension year. *Id.*

### III. ONE-YEAR EXTENSION IS APPROPRIATE

First, the Postal Service is seeking a one-year extension of the Metro Post market test. Request at 1. In general, a market test of a product may be “conducted over a period of not to exceed 24 months.” 39 U.S.C. § 3641(d)(1). However, pursuant to 39 U.S.C. § 3641(d)(2):

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 would otherwise be scheduled to terminate under paragraph (1)), extend the testing of such product for not to exceed an additional 12 months.

The Postal Service justifies its request by stating that it needs additional testing time in order to “examine the market for same-day delivery in a wider range of

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<sup>3</sup> PRC Order No. 1539, Order Approving Metro Post Market Test, November 14, 2012 (Order No. 1539).

<sup>4</sup> Responses of the United State Postal Service to Chairman’s Information Request No. 1, October 25, 2012, at 1.

<sup>5</sup> Notice of the United States Postal Service of Expansion of Metro Post Market Test, December 4, 2013.

<sup>6</sup> Request of the United States Postal Service for Extension and Expansion of Metro Post Market Test, September 19, 2014, at 1 (Request).

metropolitan areas... in order for [it] to make a final determination on the operational feasibility and the desirability of making Metro Post™ a permanent product.” Request at 1-2. Based on this brief explanation, it is difficult to evaluate precisely why an extension of the market test is preferable to making Metro Post a permanent product. However, in this case, it is not unreasonable to give the Postal Service the benefit of the doubt based on the presumption that it has the market knowledge necessary to make an informed, strategic decision. Accordingly, the Public Representative recommends that the Commission grant the Postal Service’s request to extend Metro Post market test for one year.

#### IV. EXPANSION IS GENERALLY APPROPRIATE, BUT POSTAL SERVICE SHOULD NOTIFY COMMISSION PRIOR TO EXPANSION

Next, the Postal Service requests authority to expand the market test to additional test markets during the extension year. Request at 1. Whether this request should be granted hinges upon whether the Metro Post market test will continue to satisfy the market test rules’ “market disruption” condition.<sup>7</sup> This condition requires that “[t]he introduction or continued offering of the product will not create an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer, particularly in regard to small business concerns....” 39 U.S.C. § 3641(b)(2).

The Postal Service has not yet identified where it is planning to expand the Metro Post market test. It has stated only that it “is currently evaluating additional metropolitan areas for expansion, and is primarily focusing on the largest 100 metropolitan areas based on customer demand.”<sup>8</sup> Given the broadness of the Postal Service’s plans, the Public Representative recommends that the Commission allow the expansion in principle, but continue to require that the Postal Service notify the Commission prior to expanding the market test to other metropolitan areas.

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<sup>7</sup> The Public Representative believes it is unnecessary to revisit whether the Metro Post product meets the “significantly different product” and “correct categorization” conditions. See 39 U.S.C. § 3641(b)(1), (3). However, if such analysis were required, she would aver that such conditions are met.

<sup>8</sup> Responses of the United States Postal Service to Chairman’s Information Request No. 2, October 10, 2014, at 1.

In 2012, the Commission determined that “Metro Post [was] not likely to create an unfair or otherwise inappropriate competitive advantage (either for the Postal Service or any mailer) because the market test [was] restricted to the San Francisco area and limited in the number of participants and number of packages receiving same-day delivery.” Order No. 1539 at 8. The Commission also ordered that “[t]he Postal Service must notify the Commission prior to expanding the market test to other metropolitan areas or otherwise changing the market test...” *Id.* at 13. Maintaining this requirement would continue to ensure that the Commission is fully enabled to meet its statutory duty (*i.e.*, evaluate whether the “continued offering of the product will [] create an unfair or other inappropriate competitive advantage.”).

#### V. CONCLUSION

In conclusion, the Public Representative recommends that the Commission grant the Postal Service’s request to extend the Metro Post market test for an additional year. The Public Representative also recommends that the Commission allow the Postal Service to expand the test to additional metropolitan areas in principle, but continue to require that the Postal Service notify the Commission prior such expansion.

Respectfully submitted,

/s/ Elisabeth S. Shellan

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