

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

MARKET TEST OF EXPERIMENTAL PRODUCT-
GLOBAL ECOMMERCE MARKETPLACE (GEM)
NON-PUBLISHED RATES

Docket No. MT2016-1

**UNITED STATES POSTAL SERVICE ANSWER IN OPPOSITION TO MOTION OF
UNITED PARCEL SERVICE FOR ACCESS TO NON-PUBLIC MATERIALS**
(May 12, 2016)

On May 11, 2016, United Parcel Service (UPS) filed a motion¹ requesting access to non-public materials filed in this docket. In addition, the motion requested two more weeks to prepare additional comments and the issuance of a fourth Information Request. The Postal Service opposes each request of this motion separately, as they would each cause undue delay and burden both the Commission and the Postal Service. Together, these requests seek to completely wrest from the Commission control of the procedural schedule in this proceeding. In effect, UPS is seeking to reset the schedule to allow UPS to recover from its failure to timely seek relief under the schedule already established by the Commission.

**I. THE MOTION FOR ACCESS IS FUNDAMENTALLY UNFAIR AND NOT
TIMELY**

UPS justifies its request for access to the entire sealed contents of this docket on grounds that “this information will further assist UPS in determining and quantifying the extent of the market distortions caused by the introduction of GeM Merchant into the

¹ United Parcel Service, Inc.’s Motion for Access, PRC Docket No. MT2016-1, May 11, 2016.
http://www.prc.gov/docs/95/95850/MT2016-1_Motion%20for%20Access.pdf (Motion)

marketplace.”² Yet the deadline for submission of comments in this docket has long passed, and the Postal Service is hard pressed to understand why, at this late date, UPS is now requesting access to materials when the procedural deadline calling for comments has expired. The time to have sought access to the materials would naturally have arisen *before* UPS submitted its comments in this docket. UPS indeed submitted its comments on April 19, 2016,³ and this motion inexplicably arises almost three weeks after those comments were submitted.

UPS cites to the Postal Service’s response to the Public Representative’s Motion to Unseal as evidence that the Postal Service has encouraged third parties to seek access.⁴ But UPS neglects to mention the fact that the Motion to Unseal was filed on April 4, 2016: more than five weeks ago, and well before the comment period ended. UPS had more than ample opportunity to request access, and already filed comments alleging market disruption: the same argument for which it now claims it needs more information. UPS made no effort to seek access to the three sets of materials that had already been submitted to the Commission (the initial filing and the two responses to the Chairman’s Information Requests) when it filed its original set of comments.

UPS, however, now perceives a way to get another bite at the apple. It claims that since the Postal Service made an issue of the UPS failure to examine the nonpublic materials prior to submitting its comments, UPS should therefore be afforded the opportunity to do so now. UPS argues that “basic fairness” should not allow the Postal

² Motion at 2.

³ Comments of United Parcel Service on Postal Service Notice Of Global Ecommerce Marketplace Proposed Market Test, PRC Docket No. MT2016-1, April 19, 2016.
http://www.prc.gov/docs/95/95690/2016.04.19_UPS%20GeM%20Merchant%20Comments.pdf.

⁴ Motion at 3.

Service to oppose access now, when it criticized UPS for not seeking access earlier.⁵

This specious argument fails for the simple fact that the proper time for UPS to file comments has come and gone. UPS chose not to pursue access before filing comments, and there is nothing remotely inconsistent with “basic fairness” in the Postal Service’s view that, having failed to seek access earlier, UPS should not be allowed to rewrite the procedural schedule to get access now. The Postal Service opposes the UPS request as, in fact, the direct opposite of “basic fairness.”

This motion is simply an expression of ‘buyer’s remorse’: UPS submitted unpersuasive comments during the established comment period and now pins its hopes on finding any bit of information in the Postal Service’s non-public materials that could be spun to support the conclusion that UPS has already drawn. Similar to UPS’s repeated attempts at a do-over in Docket RM2015-7,⁶ the Commission should recognize this desperate, time-wasting tactic and deny UPS’s motion.

II. THE CALL FOR AN ADDITIONAL TWO WEEK COMMENT PERIOD IS UNNECESSARY AND WILL FURTHER PREJUDICE THE POSTAL SERVICE.

The GeM Merchant Solution market test was originally filed on March 16, 2016.⁷ The Commission issued its notice of filing on March 18,⁸ and comments were originally

⁵ Motion at 3-4.

⁶ See *generally* PRC Order 2646, Order Granting Motions to Strike, PRC Docket No. RM2015-7, August 10, 2015, in which the Commission denied UPS’s attempts to continue drawing out the comment period in that docket.

⁷ Notice of the United States Postal Service of Market Test of Experimental Product- Global Ecommerce Marketplace (GeM) Merchant Solution and Notice of Filing Gem Merchant Model Contract and Application For Non-Public Treatment of Materials Filed Under Seal, PRC Docket MT2016-1, March 16, 2016. <http://www.prc.gov/docs/95/95332/CombinedMT2016-1Filing.pdf> (Notice).

⁸ PRC Order No. 3162, Notice and Order Concerning Market Test of Experimental Product—Global eCommerce Marketplace (GeM) Non-Published Rates, March 18, 2016. <http://www.prc.gov/docs/95/95358/Order3162.pdf>.

due on April 11, 2016. This deadline was already pushed back twice: once to April 15,⁹ then to April 19.¹⁰ Finally, comments were received from both UPS¹¹ and the Public Representative¹² on April 19.

The relevant statutory provision, 39 U.S.C. § 3641(c)(1), and the corresponding regulation in 39 C.F.R. § 3035.2, require the Postal Service to file only thirty days before initiating the market test. But in order to give the Commission ample time to review this filing, the Postal Service instead filed 45 days before the intended effective date, which it reported in its initial request to be “on or shortly after April 30, 2016.”¹³ As a consequence of the many information requests and other procedural issues, the Postal Service has been forced to push back the commencement of the market test to the middle of May. This is due to the expectation that the Commission would not be able to issue a final order in this matter until sometime after responses to the Commission Information Request and Notice of Inquiry were filed.

In filing its original set of comments, UPS made a conscious choice to make certain assumptions about the contents of the nonpublic material already provided, rather than actually seeking access to those materials in a timely fashion. The schedule in this docket, as in many similar dockets, gave UPS only one opportunity to present its challenges to the market test, and it made its decision. The Postal Service, in its Reply

⁹ PRC Order No. 3212, Order Extending Comment Deadline, April 5, 2016.
http://www.prc.gov/docs/95/95561/Order_3212.pdf.

¹⁰ PRC Order No. 3236, Order Extending Comment Deadline, April 12, 2016.
<http://www.prc.gov/docs/95/95630/Order%20No.%203236.pdf>. The order states that the new deadline will be “no later than seven days after the Postal Service files its response to CHIR No. 2,” which was April 12, 2016.

¹¹ Comments of United Parcel Service on Postal Service Notice Of Global Ecommerce Marketplace Proposed Market Test, PRC Docket No. MT2016-1, April 19, 2016.
http://www.prc.gov/docs/95/95690/2016.04.19_UPS%20GeM%20Merchant%20Comments.pdf.

¹² Public Representative Comments, PRC Docket No. MT2016-1, April 19, 2016.
<http://www.prc.gov/docs/95/95692/PRComments.pdf>.

¹³ Notice at 6.

Comments, properly held UPS accountable for the inaccuracies in its assumptions resulting from its failure to seek access immediately when the nonpublic materials were submitted.

Now, UPS seeks to cause additional, significant delays to the implementation of the Market Test by essentially restarting the comment period to fix its own error in judgment. In its motion, UPS asks for an additional two weeks to review the Postal Service's confidential information and prepare an additional set of comments. If UPS's motion was granted immediately upon the filing of this response (May 12, 2016), then these comments would still be filed more than *five weeks* after the already-twice-extended deadline for comments of April 19, 2016. Other parties may be inclined to follow suit, contributing to possibly more delay. The Postal Service may also need to respond to any new arguments or allegations made by UPS during this second comment period. Then the Commission would need time to evaluate and incorporate the comments of all parties into its final order. All of these procedural steps add up to an unnecessarily burdensome and long review process.

Additional delay and uncertainty will cause the Postal Service to miss the opportunity to launch its new product within a reasonable time after this docket was initiated, and will give competitors more time to gear up in advance of the Postal Service's entry into this market. This will prove to be highly prejudicial to the Postal Service, which is subject to a unique regulatory regime that requires a much greater degree of transparency than its competitors, and further prove that the regulatory regime is ill-equipped to support the Postal Service in its effort to innovate in a dynamic and changing marketplace.

III. THE CALL FOR A FOURTH INFORMATION REQUEST WILL ALLOW EVEN FURTHER DELAY AND ONLY CATERS TO A PET ISSUE FOR UPS.

In addition to its request for access to non-public materials and the call for an additional two weeks in which to prepare comments, UPS also asks for the issuance of a fourth information request. Unsurprisingly, the requested information is primarily focused on the issue of terminal dues and customs features of the Universal Postal Union (UPU).

As the Postal Service has already made clear in its reply comments and in the response to Chairman's Information Request No. 2:

"UPS wrongly assumes that the GeM Merchant Solution will use international postal services and UPU-based documentation. In reality, the Postal Service will use a variety of commercially available international delivery services for this product. Those private companies are expected to handle a significant portion of the volume of this product, and that volume will be sent through commercial customs channels just like a UPS shipment would.¹⁴

By ignoring that response, UPS shows that it is simply using this market test docket as a convenient platform to air its grievances with the UPU system in general and ignores the large number of products currently using the UPU system that have been approved by the Commission and compete with UPS products without causing market disruption.

The Commission should not allow the procedural schedule to be abused so that UPS can have a convenient soap box upon which to denounce the international postal system in general. This docket should instead remain focused on the experimental product at hand and proceed without extended tangential delays. The Commission should put a firm end to UPS's attempt to sidetrack this proceeding into irrelevant issues.

¹⁴ United States Postal Service Response to the Comments of the United Parcel Service, PRC Docket No. MT2016-1, April 28, 2016 at 2.

IV. CONCLUSION.

UPS's motion is untimely. As the comment period has long passed, there is no further need for access to materials, an additional two week comment period, or a fourth information request. Furthermore, granting this motion would be severely prejudicial to the Postal Service. The Commission should act expeditiously in this matter to inspire confidence that its processes can work fairly, effectively, and swiftly. Accordingly, the motion should be denied.

Respectfully submitted,

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