

BEFORE THE
POSTAL REGULATORY COMMISSION

MARKET TEST OF EXPERIMENTAL :
PRODUCT GLOBAL ECOMMERCE :
MARKETPLACE (GEM) NON-PUBLISHED : Docket No. MT2016-1
RATES :

UNITED PARCEL SERVICE, INC.'S REPLY
IN SUPPORT OF MOTION FOR ACCESS

(May 16, 2016)

United Parcel Service, Inc. ("UPS") respectfully submits these reply comments in further support of the motion for access it filed on May 11, 2016. See United Parcel Service Inc.'s Motion for Access ("Motion for Access"), Dkt No. MT2016-1 (May 11, 2016). The Postal Service opposes the motion, primarily on the ground that it is "untimely" because it was purportedly filed too late. United States Parcel Service Answer in Opposition to Motion for United Parcel Service for Access to Non-Public Materials at 7 ("Postal Service Opposition"), Dkt. No. MT2016-1 (May 12, 2016). The Postal Service is mistaken. UPS timely filed its Motion for Access on May 11, 2016.

Specifically, on April 29, 2016 – ten days after UPS filed its Comments in this docket – the Commission issued Information Request No. 1 seeking information from the Postal Service about GeM Merchant and its potential impact on the market. See Commission Information Request No. 1 ("Commission Information Request"), Dkt. MT2016-1 (April 29, 2016). The Postal Service filed its Response to the Commission

Information Request on May 9, 2016. See Response of the United States Postal Service to Commission Information Request No. 1, Dkt. No. MT2016-1 (May 9, 2016). The vast majority of the Postal Service's Response was filed under seal. See *id.* at 3-11. UPS promptly filed a motion for access to these materials two days later, on May 11, 2016.

Had UPS filed a motion for access prior to the Postal Service submitting its Response to Commission Information Request No. 1, the motion for access would have been premature and incomplete. Indeed, when UPS previously filed a motion for access in a different docket prior to the sealed materials in question being filed, the Commission rejected UPS's motion as premature. For the Postal Service to claim that UPS's motion for access was filed too late is simply mistaken. Accordingly, UPS should be granted access to these materials and should be permitted to provide comments in response thereto.¹

The Postal Service also contends that allowing UPS to provide additional comments will unduly delay its launch of the GeM Merchant market test. See Postal Service Opposition at 3-5. But any additional time in launching the GeM Merchant market test is the result of the fact that the Postal Service did not provide the Commission with adequate information to evaluate whether its proposed test of GeM Merchant meets the statutory criteria, and not the result of anything UPS has done.

¹ Should the Commission grant UPS access to the Postal Service's Response to Commission Information Request No. 1, it should simultaneously provide access to Attachments 3 and 4, and UPS's Responses to Chairman's Information Requests Nos. 1 and 2, as previously requested by UPS. Providing access to these additional materials will lead to more informed comments by UPS and will not prejudice the Postal Service.

Under 39 U.S.C § 3641(b), a product may not be tested unless it satisfies the specified statutory conditions. It is the Postal Service's burden to satisfy these conditions, and a market test cannot begin until the Commission is satisfied that the Postal Service has done so. See Order Adopting Final Rules For Market Tests Of Experimental Products, Dkt No. RM2013-5 at 7 (Aug. 28, 2014) (recognizing it is the Postal Service's burden to satisfy the statutory conditions). In this case, the Postal Service has not yet demonstrated that it meets the requirements of § 3641(b).

Indeed, the Commission has issued three information requests to the Postal Service seeking information the Postal Service did not initially provide. Thus, any delay in launching the GeM Merchant product test has stemmed from the Postal Service's failure to provide adequate information for the Commission to evaluate GeM Merchant.

Nor has the Postal Service demonstrated that providing an additional two weeks for UPS to offer further comments will cause prejudice. It has merely offered conclusory assertions that prejudice will result.

Finally, the Postal Service claims that the information UPS seeks regarding terminal dues is "irrelevant" to this docket. Postal Service Opposition at 6. Not so. This information will allow the Commission more accurately to identify the existence and extent of the potential market distortions created by the Postal Service's access to below-cost terminal dues. Unless and until the Postal Service can unequivocally state that *no portion* of the shipments made through GeM Merchant will use international posts, the possibility remains that the Postal Service will derive unfair advantages through GeM Merchant that are not available to its competitors.

To date, however, the Postal Service has been unable to provide this assurance. Instead, in several filings in this docket, the Postal Service has indicated it will, in fact, be using international posts for some portion of the shipments made through GeM Merchant. See United States Postal Service Response to the Comments of the United Parcel Service at 2, Dkt. No. MT2016-2 (April 28, 2016) (indicating there is a “portion of the volume for” GeM Merchant that will be shipped using international postal services and UPU-based documentation); see *also* Postal Service Opposition at 6 (same). Given this admission by the Postal Service, the Commission should issue the information request proposed by UPS as the responses to the questions will further assist in evaluating the extent of market disruption caused by GeM Merchant.

Respectfully submitted,

UNITED PARCEL SERVICE, INC.,

By: /s/ Steig D. Olson

Steig D. Olson
Quinn Emanuel Urquhart & Sullivan, LLP
51 Madison Ave., 22nd Floor
New York, NY 10010
(212) 849-7152
steigolson@quinnemanuel.com

Attorney for UPS