

Before the  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Market Test of Experimental Product-  
Customized Delivery

Docket No. MT2014-1

PUBLIC REPRESENTATIVE COMMENTS

(August 29, 2016)

I. Introduction

The Commission invited comment on the Postal Service's request to extend the Customized Delivery market test for one year and to expand to new markets during that year.<sup>1</sup> Based on a review of the Postal Service's public and sealed filings in this docket, the Public Representative concludes that the requested extension appears to be consistent with 39 U.S.C. § 3641 and 39 C.F.R. § 3035.11. To ensure that the extended test meets those requirements, the Public Representative suggests improvements to geographic expansion notices and quarterly data collection reports.

II. Procedural History

A. The Approval of the Customized Delivery Market Test

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<sup>1</sup> Notice and Order Concerning Request for Extending and Expanding Market Test and Designating Substitute Public Representative, July 12, 2016 (Order No. 3424). On motion of the Public Representative, the Commission extended the comment deadline to three business days after the filing of the complete responses to Chairman's Information Request No. 7 (CHIR No. 7). Order No. 3448, Order Granting Motion to Extend Comment Deadline, July 26, 2016; Public Representative Motion to Extend Comment Deadline, July 26, 2016.

On September 23, 2014, the Postal Service filed notice of its intent to test an experimental competitive product—Customized Delivery.<sup>2</sup> To gather necessary information about the proposed market test, three information requests were issued.<sup>3</sup> On October 23, 2014, the Commission authorized the market test to proceed and required the Postal Service to file data collection reports within 40 days after the close of each fiscal quarter. Order No. 2224 at 19-20. The Commission updated the data reporting requirements to require information to be “disaggregated by fiscal quarter, for each metropolitan area tested as part of the Customized Delivery market test.”<sup>4</sup>

#### B. The Testing of Customized Delivery

The Postal Service began the market test on November 1, 2014, in San Francisco.<sup>5</sup> The Postal Service expanded the market test to six new markets: New York City, San Diego, Los Angeles, Sacramento, Stamford, and Las Vegas. Request at 1. To obtain necessary information about the proposed geographic expansions, two information requests were issued.<sup>6</sup> To obtain quarterly data “disaggregated by fiscal quarter, for each metropolitan area tested” as required by Order No. 2236, an information request was issued.<sup>7</sup> On July 7, 2016, the Postal Service submitted the data collection reports for the first 2 quarters of fiscal year (FY) 2016.<sup>8</sup>

#### C. The Request to Extend and Expand the Customized Delivery Market Test

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<sup>2</sup> Notice of the United States Postal Service of Market Test of Experimental Product – Customized Delivery, September 23, 2014.

<sup>3</sup> Order Authorizing Customized Delivery Market Test, October 23, 2014, at 3-4 (Order No. 2224).

<sup>4</sup> Order Updating Data Collection Plan for the Customized Delivery Market Test, October 31, 2014, at 2 (Order No. 2236).

<sup>5</sup> Request of the United States Postal Service for Extension of Customized Delivery Market Test, July 8, 2016, at 1 (Request).

<sup>6</sup> Chairman’s Information Request No. 4, July 15, 2015; Chairman’s Information Request No. 6, January 28, 2016.

<sup>7</sup> Chairman’s Information Request No. 5, December 16, 2015; see *also* Order No. 2236 at 2.

<sup>8</sup> Customized Delivery Data Collection Report, Fiscal Year 2016, Quarters 1 and 2, July 7, 2016.

On July 8, 2016, the Postal Service asked to extend the Customized Delivery market test one year, until October 31, 2017. Request at 2. The Postal Service also plans to expand Customized Delivery to new markets during the proposed extension. *Id.* at 1. On July 14, 2016, CHIR No. 7 directed the Postal Service to provide information to facilitate the Commission's evaluation of the Request and data collection report for the first 2 quarters of FY 2016.<sup>9</sup> The Postal Service responded to CHIR No. 7 on July 21, 2016,<sup>10</sup> August 18, 2016,<sup>11</sup> and August 24, 2016.<sup>12</sup>

### III. Extension

#### A. Standard of Review

Generally, a market test of an experimental product may not exceed 24 months. 39 U.S.C. § 3641(d)(1). However, the Postal Service may apply to the Commission to extend the market test period up to 12 more months. *Id.* § 3641(d)(2). The Commission may grant the application “[i]f necessary in order to determine the feasibility or desirability of a product being tested under [section 3641].” *Id.*; see also 39 C.F.R. § 3035.11(c). The Commission must also find whether the extension is consistent or inconsistent with section 3641. 39 C.F.R §§ 3035.11(c)(1)-(3). If the Commission finds the extension is inconsistent with section 3641, the Commission may give the Postal Service with an opportunity to cure the identified deficiencies or deny the request. See *id.* §§ 3035.11(c)(2)-(3). The Commission also shall “[d]irect other action as the Commission considers appropriate.” *Id.* § 3035.11(c)(4).

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<sup>9</sup> Chairman's Information Request No. 7, July 14, 2016.

<sup>10</sup> Responses of the United States Postal Service to Chairman's Information Request No. 7, Questions 1 and 2, July 21, 2016 (July 21, 2016 Responses to CHIR No. 7).

<sup>11</sup> Responses of the United States Postal Service to Chairman's Information Request No. 7, Questions 3-6 and 8-10, Filed Under Seal, August 18, 2016 (August 18, 2016 Responses to CHIR No. 7); Notice of the United States Postal Service of Filing Public Responses to Chairman's Information Request No. 7, Questions 3(c), 4, and 5(b), August 23, 2016 (August 23, 2016 Responses to CHIR No. 7).

<sup>12</sup> Notice of The United States Postal Service of Filing Response to Chairman's Information Request No. 7, Question 7, August 24, 2016.

B. Is the requested one-year extension necessary to determine the feasibility or desirability of Customized Delivery?

CHIR No. 7 sought information to ascertain if the requested extension is necessary to determine the feasibility or desirability of Customized Delivery. Although the Postal Service claims the extension is needed “to evaluate the long-term demand and market pricing for such a service,” the Postal Service does not appear to claim that the extension would experiment with pricing strategies. July 21, 2016 Responses to CHIR No. 7, question 2a. Instead, the Postal Service appears to focus its extension plans on operational strategies aimed to reduce costs, improve service, and to “gain additional customers to provide additional test data.” *Id.*, questions 1 and 2a. It is not unreasonable or unprecedented for the Commission to approve the Request based on the Postal Service’s representations.<sup>13</sup> Allowing the Postal Service to experiment with operations, costing, service, and pricing during an additional test year is consistent with the Commission’s authority over market tests of experimental competitive products.

C. Is the requested one-year extension consistent with 39 U.S.C. § 3641?

A market test, including any extension period, must satisfy 39 U.S.C. § 3641(b). The Commission must determine that the “continued offering” of Customized Delivery during the requested extension period “will not create an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer, particularly in regard to small business concerns.”<sup>14</sup> This determination is a four-step analysis.<sup>15</sup>

First, the Commission identifies the relevant market by examining the description of Customized Delivery and the geographic areas where the Postal Service intends to offer Customized Delivery during the requested extension period. See Order No. 3319

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<sup>13</sup> See Docket No. MT2013-1, Order Approving Request for Extension and Expansion of Metro Post Market Test, Order No. 2243, November 7, 2014, at 6.

<sup>14</sup> 39 U.S.C. § 3641(b)(2). Compliance with 39 U.S.C. §§ 3641(b)(1) and (3) is unaffected because Customized Delivery’s other characteristics are unchanged.

<sup>15</sup> Docket No. MT2016-1, Order Authorizing Market Test of Global eCommerce Marketplace (GeM) Merchant, May 25, 2016, at 12-17 (Order No. 3319).

at 13. Customized Delivery is “a set-window delivery of groceries and other prepackaged goods.” Order No. 2224 at 9. The Postal Service represents that it does not plan to change the test parameters and will continue testing in seven markets during the extension. July 21, 2016 Responses to CHIR No. 7, question 1; Request at 1.

Second, the Commission identifies the businesses offering similar products or services in that relevant market. Order No. 3319 at 13. These businesses include grocery delivery service providers operating in these seven metropolitan areas. See Order No. 2224 at 10. Upon request, the Postal Service identified several providers. See August 23, 2016 Responses to CHIR No. 7, question 4a-b.

Third, the Commission “evaluate[s] whether the introduction or continued offering of [Customized Delivery] will create an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer.... with regard to the service providers identified in step 2.” Order No. 3319 at 13 (internal quotation marks omitted). Market test notices should include “examples of businesses that offer similar products or services” and “the range of prices these businesses charge for similar products and services.” *Id.* The record identifies the range of prices charged by competitors in New York City, Sacramento, Stamford, and Las Vegas;<sup>16</sup> these price ranges appear comparable to the sealed Customized Delivery price ranges. Publicly available information does not suggest that competitors’ price ranges in San Diego, Los Angeles, or San Francisco vary significantly from the price ranges on the record.<sup>17</sup>

Fourth, the Commission evaluates the market test’s impact on “small business concerns” in the relevant market. Order No. 3319 at 16. “In this case, ‘small business concerns’ mean Courier and Express Delivery Services companies with 1,500 or fewer employees and Local Messengers and Local Delivery companies with annual receipts

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<sup>16</sup> Responses of the United States Postal Service to Chairman’s Information Request No. 4, July 22, 2015, questions 1-3 (Responses to CHIR No. 4); Responses of the United States Postal Service to Chairman’s Information Request No. 6, February 8, 2016 (Responses to CHIR No. 6).

<sup>17</sup> Also, the Postal Service represents that its market test price range in San Francisco “falls within the general range currently in the marketplace.” Responses of the United States Postal Service to Chairman’s Information Request No. 2, October 10, 2014 (Responses to CHIR No. 2).

of \$27.5 million or less.” Order No. 2224 at 11. The Postal Service represents that it “did not perform market research to this level of detail, but expects the prices offered by small businesses in this market are comparable to the price range offered by the Postal Service through this market test and by larger grocery delivery firms.”<sup>18</sup>

Also, the Postal Service does not seek an exemption to the \$10 million, as adjusted for inflation, annual revenue limitation during the extension.<sup>19</sup> The online grocery shopping sales market in the United States is a growing multi-billion dollar industry.<sup>20</sup> Although the market share for each metropolitan area is smaller, the limitations on revenue (\$10 million) and duration (one year) applicable to the Postal Service’s continued offering of Customized Delivery mitigate against the risk of creating an unfair or inappropriate competitive advantage for the Postal Service or any participating retailer during the extension. See Order No. 3319 at 15.

Based on the record, the extension appears consistent with 39 U.S.C. § 3641. To ensure that the extension does not create market disruption in particular metropolitan areas, the Public Representative recommends that the Commission continue to require the Postal Service to provide notice of material changes to the market test or the services offered (including geographic expansion) and quarterly data reports to the Commission, with sufficient supporting information. See *infra* parts IV and V. During the extension, if the Commission determines that the test no longer complies with the statute and rules, the Commission may cancel the test or take other action that it deems appropriate. 39 U.S.C. § 3641(f); 39 C.F.R. § 3035.12.

#### IV. Geographic Expansion

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<sup>18</sup> Responses to CHIR No. 6, question 3; Responses to CHIR No. 4, question 3; Responses of the United States Postal Service to Chairman’s Information Request No. 3, October 17, 2014, question 3c; see *also* August 23, 2016 Responses to CHIR No. 7, question 4a-b.

<sup>19</sup> See 39 U.S.C. § 3641(e); August 18, 2016 Responses to CHIR No. 7, question 3b.

<sup>20</sup> See, e.g., Suzette Parmley, *Grocery Shopping Grows Online*, The Philadelphia Inquirer, December 14, 2015, [http://articles.philly.com/2015-12-14/business/69009213\\_1\\_grocery-store-curb-side-pickup-peg-merzbacher](http://articles.philly.com/2015-12-14/business/69009213_1_grocery-store-curb-side-pickup-peg-merzbacher) (“Online-retail analysts estimate that U.S. consumers spent about \$24 billion buying groceries online last year.”).

Order No. 3424 invited comment on the proposed geographic expansion. The Commission must determine if the proposed expansion will satisfy section 3641(b)(2).<sup>21</sup> The Postal Service represents that it is not asking to expand into any new markets at this time and will file an expansion notice before entering any new markets. August 23, 2016 Response to CHIR No. 7, question 4a-b. The Postal Service also represents that each expansion notice will contain the information requested in question 5b of CHIR No. 7, specific to each new market. See *id.*, question 5b.

The Public Representative recommends that the Commission review any proposed geographic expansion based on each expansion notice, which must contain the information sought in question 5b of CHIR No. 7, specific to each new market. The Commission needs this minimum information to assess market disruption before entry into a new market.<sup>22</sup> Including this information in each expansion notice would facilitate efficient Commission review for compliance with section 3641(b)(2) by minimizing the delay from issuing and responding to information requests. Also, making supporting information readily accessible to the public promotes transparency and facilitates the public's ability to participate in Commission dockets.

#### V. Data Collection Reports

To facilitate the Commission's monitoring of the extension and any expansion for compliance with section 3641(b)(2), the Public Representative suggests that the Commission direct the Postal Service to report quarterly data in the format used by the Commission. See CHIR No. 7, Attachment. Disaggregated data is essential because the Postal Service has emphasized that Customized Delivery's permanent product potential, long-term demand, and pricing may vary by market. See Request at 1-2; July 21, 2016 Responses to CHIR No. 7, question 2a. The Public Representative suggests

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<sup>21</sup> See Order No. 2243 at 7. Compliance with 39 U.S.C. §§ 3641(b)(1) and (3) is unaffected because Customized Delivery's characteristics are otherwise unchanged. See *id.*

<sup>22</sup> See Order No. 2224 at 13; see also Responses to CHIR No. 2, questions 1 and 3; Responses to CHIR No. 4, questions 1-3; Responses to CHIR No. 6, questions 1-3; CHIR No. 7, question 5b.

that the Commission direct the Postal Service to explain its assumptions underlying operational labor costs in each report, similar to note 6 in past reports, specific to each market.<sup>23</sup> To assess the test's growth and potential market disruption in each market, the Public Representative suggests adding a row for the number of participating retailers, as illustrated in the attached table. See Attachment.

#### VI. Insufficiency of the Request

The Request lacked information required by Commission regulations and Order No. 2224. Filing insufficient documents with the Commission harms regulatory efficiency and transparency. Issuing and responding to CHIR No. 7 were necessary to obtain information to enable the Commission to evaluate the Request. Providing this information in CHIR responses over 30 days after the Request hinders the public's ability to participate meaningfully in this docket. Because the responses to CHIR No. 7 do not suggest the proposed extension would be inconsistent with 39 U.S.C. § 3641 and 39 C.F.R. § 3035.11, the Public Representative comments on the insufficiency to draw attention to the need to maximize regulatory efficiency and transparency for future filings (such as geographic expansion notices and quarterly data reports) in this docket.

Respectfully submitted,

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<sup>23</sup> See, e.g., Customized Delivery Data Collection Report, FY 2015, Q 4, December 8, 2015, at 2; see also August 18, 2016 Responses to CHIR No. 7, questions 9-10.

**Attachment**

**Fiscal Year 201\*, Quarter \***

	Operational Performance	San Francisco	Los Angeles	San Diego	New York	Sacramento	Stamford	Las Vegas	Q* Total
1	Total revenues								
2	Attributable costs								
3	Number of deliveries (stops)								
4	Additional fees charged per delivery								
5	Number of addresses delivered to								
6	Number of packages dropped off for each delivery (stop)								
7	Total number of packages delivered								
8	Work hours								
9	Total estimated miles								
10	Total estimated travel time in hours								
11	Operational labor costs								
12	Operational vehicle costs								
13	Total operational costs								
14	Administrative costs <sup>1</sup>								
15	Number of Participating retailers								

<sup>1</sup> Please include startup-costs, product specific costs related to the administration of the market test, and costs of dedicated delivery routes.