

Before the
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

Classification Changes for Express Mail)
Mail Second Day Service

Docket No. MC2006-4

OFFICE OF THE CONSUMER ADVOCATE
COMMENTS IN RESPONSE TO ORDER NO. 1462
(May 4, 2006)

By Order No. 1462,¹ the Commission instituted this mail classification case to consider and clarify the language of the Domestic Mail Classification Schedule (DMCS) for Express Mail service. The Commission requested comments by May 3, 2006 to identify and discuss matters indicating a need for a prehearing conference or a hearing. The order further invited comments on the Commission's proposed language to clarify §123.1 of the DMCS.

Office of the Consumer Advocate (OCA) Proposal for
Procedures to Resolve the Inadequacy of Current DMCS Language
to Inform the Public of Expected Service

In the view of OCA, the instant classification docket should be joined with the rate case filed on May 3, 2006.. The chief reason for doing so is to provide a convenient vehicle (the rate case) to explore, through hearings, various channels that the Postal Service uses to inform the public about the service it can expect from Express Mail. OCA also proposes to use the rate case to determine, through discovery, the accuracy and clarity of information provided to the public, particularly with respect to delivery on

the “Second Delivery Day.” In short, OCA believes that evidence regarding actual operation of “Second Delivery Day” is a necessary prerequisite to choosing the most informative language, and method, of informing members of the public about what to expect when they buy Express Mail.

The Postal Service should provide specific evidence as to the various circumstances for Next Day, Second Day and Second Delivery Day (or other time period) when Express Mail is expected to be delivered for purposes of the money back guarantee for failure to deliver on time. Further, the Commission should also encourage the Postal Service to ensure that the policy is applied evenly and clearly. To this end, the Postal Service must provide to actual, and potential, customers the precise, guaranteed delivery date for their mailing at each of the following channels: (1) post office retail windows, (2) the Postal Service website, and (3) USPS telephone inquiries.

OCA believes that administrative economy will be maximized by joining the instant classification proceeding and the rate case because essentially the same issues must be explored in both dockets. In the rate case, OCA intends to use the hearing process to determine the service standards, the “value of the [Express] [M]ail service actually provided” to purchasers of Express Mail² with respect to speed of delivery, and the clarity of the terms of service for Express Mail. The evidence adduced on these issues will allow OCA to propose a cost coverage that may be different from that proposed by the Postal Service; with respect to administrative economy, OCA may also wish to propose different classification language from that presented in Order No. 1462.

¹ “Notice and Order Instituting Docket No. MC2006-4 for Classification Changes to Clarify Express Mail Second Day Service,” April 18, 2006.

² 39 U.S.C. §3622(b)(2).

The evidentiary basis for doing so is likely to overlap, if not co-extend, with that relating to cost coverage.

OCA may propose having the Postal Service proffer a witness who can testify on the operation of the Express Mail network, its limitations, and the type of information provided to the public. Before deciding whether to submit such a proposal, OCA must first review the contents of the rate case filing.

Even if the Commission decides not to join the two proceedings, OCA respectfully requests that hearings be held in Docket No. MC2006-4, and that a Postal Service witness be directed to testify.

OCA's Alternative Approach if the Commission Chooses Not to
Join Docket Nos. MC2006-4 and R2006-1

Pursuant to OCA's settlement understanding with the Postal Service in Docket No. R2005-1, OCA has worked closely with the Postal Service to develop a chart for customers detailing the day of delivery for Express Mail service. That chart, based upon OCA's understanding with the Postal Service, will, as agreed to in Docket No. R2005-1, soon be made available on its website. OCA commends the Postal Service for its willingness to provide this additional information to its customers. However, as the Commission recognizes, the concept of second delivery day is not clearly addressed in the DMCS, nor is it intended to be a separate service. Moreover, the concept does not lend itself to ready definition, nor does the term "second delivery day" accurately describe the expected delivery times – that can occur up to four calendar days from the date of mailing.

In Order No. 1462, the Commission states that, "The primary focus of this proceeding is on how best to clearly state in the DMCS the scope of Second Day

Express Mail service that the Postal Service intends to provide its customers.” Order at 1 and 2. The OCA agrees with this goal. The need for clarity in the DMCS is essential if customers are to have sufficient information to determine the service standards applicable to Express Mail, and their eligibility for refunds when that guaranteed service is not provided.

Unfortunately, the Commission’s proposed change to the DMCS does not provide the clarity needed by a purchaser of Express Mail. The inclusion of the additional text “delivery on the second delivery day as specified by the Postal Service” leaves the term “Second Delivery Day” undefined. If the Commission determines to proceed without adducing additional evidence, OCA proposes new text for the DMCS to provide clarity. However, the language we have fashioned necessarily reflects our current state of “understanding.”

At base, the concept of “second delivery day” is a poorly explained, confusing “moving target” for the customers of Express Mail service. As the Commission has observed, “several DMCS provisions call for second day delivery, when, in certain limited circumstances, the Postal Service has admitted that it does not expect to provide delivery until the third or fo[u]rth day.” Order at 2. The notion that the “second delivery day” could be not one, but one of two days, depending upon a Sunday/Monday-holiday delivery schedule unknown to the customer, exposes the complexity of determining delivery for Express Mail service. Moreover, there is little if any information from the Postal Service, especially on its website as of now, that would permit customers to clearly determine the “second delivery day” based upon the date of entry. In fact, customers are simply told they will receive Next Day, Second Day, or Second Delivery

Day service, which, of course, could actually be day three or four from the day of entry, depending upon whether or not Monday is a holiday.

The need to provide clarity for Express Mail customers as to the nature of delivery on the “second delivery day” was a matter of some importance to the OCA during the pendency of Docket No. R2005-1. In that proceeding, OCA propounded a number of interrogatories in order to understand the concept of the “second delivery day,” as currently specified by the Postal Service. More specifically, OCA wanted to know the intended day of delivery for Next Day, Second Day, and the “second delivery day” based upon the day of entry, and under what circumstances customers could expect delivery on the “second delivery day.” Toward this end, OCA filed interrogatory OCA/USPS-133, that presented a table (and accompanying notes thereto) specifying the day of delivery, and invited the Postal Service to “make whatever changes are deemed appropriate to improve the accuracy of this guide” to consumers. The OCA subsequently filed OCA/USPS-194, revising the table and notes thereto, and incorporating the suggestions and corrections of the Postal Service.

As part of OCA’s settlement in Docket No. R2005-1, the Postal Service agreed to produce a chart modeled on the chart presented in interrogatory OCA/U[S]PS-194 (Docket No. R2005-1) to explain to consumers the number of days for delivery for Next Day, Second Day, and “second delivery day.” The chart and informational notes thereto will be posted on the internet together with the performance data and should explain delivery on the “second delivery day.” Letter of John E. Potter, Postmaster General and Chief Executive Officer, to Shelley S. Dreifuss, Director, Office of the Consumer Advocate, July 22, 2005, at 2.

After several additional iterations and subsequent discussions, OCA and the Postal Service agreed that the following chart and informational notes would be posted on the Postal Service’s website:

Scheduled Day of Delivery for Next Day and Second Day
 Express Mail Based Upon Day of Mailing

Guaranteed Day of Delivery ***	Day of Mailing (prior to published "Drop-Off" Times)						
	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Next Day ^{1/}	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY	MONDAY
Second Day	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY	MONDAY	TUESDAY
"2nd Delivery Day" ^{2/}	3/	3/	3/	3/	MONDAY	3/	3/

Notes:

*** For all Express Mail items, delivery on the Next Day, Second Day, or "2nd Delivery Day" is based in part on the ZIP Code of mailing (origin ZIP Code) and the ZIP Code of delivery (destination ZIP Code).

^{1/} Guaranteed Next Day delivery is available between many ZIP Code for items mailed during the week, Monday through Friday. The availability of Next Day service between ZIP codes is more limited for items mailed on weekends or Federal holidays, for items destined to a ZIP Code that does not have delivery on Sundays or Federal holidays, and for PO-PO items or items addressed to a post office box that are sent immediately prior to a weekend. In such circumstances, or when the item is mailed to a remote destination ZIP Code, the guaranteed day of delivery will be the Second Day (or "2nd Delivery Day" as explained in note 2).

^{2/} "2nd Delivery Day" is not a distinct service, but applies to mailings to those ZIP Codes where postal delivery is not provided on Sundays or Federal holidays, and delivery is guaranteed on the next regular delivery day. As indicated in the table, "2nd Delivery Day" typically applies only to mailings on Friday to a destination that lacks Sunday/holiday delivery; in that case, the piece is guaranteed for delivery on the next regular delivery day, which is Monday, or Tuesday if Monday is a Federal holiday. "2nd Delivery Day" may also apply to Express Mail sent two days before a holiday: for example, a piece mailed on a Tuesday to a remote destination that does not have Sunday/holiday delivery when Thursday is a Federal holiday would not be delivered until Friday (see note 3). For PO-PO items or items addressed to a post office box sent immediately prior to a weekend, "2nd Day Delivery" may apply if the post office is closed on Saturday or has limited retail hours.

^{3/} "2nd Delivery Day" may apply to mailings on days other than Friday when the piece is sent before a holiday, and the destination does not have Sunday/holiday delivery. In such a case, the piece will be guaranteed on the next regular delivery day, as follows:

<u>Day of Mailing</u>	<u>Holiday</u>	<u>Scheduled Day of Delivery</u>
Monday	Wednesday	Thursday
Tuesday	Thursday	Friday
Wednesday	Friday	Saturday
Thursday	Saturday	Monday
Saturday	Monday	Tuesday
Sunday	Tuesday	Wednesday

It is OCA's understanding that the Postal Service intends very soon to post this chart on its website together with its other Express Mail information.

However, the chart addresses but one problem facing Express Mail customers: the need for better information when considering the purchase of Express Mail service.

It provides customers a necessary and useful tool to browse for available services.

The benefit of this chart and the accompanying informational notes is that combined, they state the *day* of the week that delivery can be expected when delivery occurs on the "second delivery day." Better still would be an expected *date certain* for delivery to

be provided at postal retail counters, 1-800-ASK-USPS phone inquiries, and the Postal Service's website, when customers provide a date of entry. Thus, for example, when customers access the Postal Service's website and provide a date they intend to enter their Express Mail item, say Wednesday, May 3, 2006, the website should return a date and time certain such as May 4, 2006, 3:00 p.m., for the service commitment day, rather than a reference to Next Day, or Second Day, or the confusing Second Day Delivery.

To give customers the clarity they need to enforce a claim for a refund in the event the Postal Service does not meet its guaranteed service commitment, the DMCS must be made specific as to the service standard for Next Day, Second Day, and the "second delivery day." The OCA therefore proposes that the specific calendar date that delivery is guaranteed should be made available to consumers at each of three locations: retail counters, phone inquiries, and the Postal Service website. Additionally, OCA offers alternative DMCS language explaining the availability of second delivery day service based on OCA's current understanding of that service:

Proposed DMCS Clarifying Language

OCA offers revised clarification language for Section 123.1 of the DMCS.

Availability of Services. *Next Day and Second Day Services are available at designated retail postal facilities to designated destination facilities or locations for items tendered by the time or times specified by the Postal Service. Next Day Service is available for overnight delivery.*

Second Day Service is available for delivery on the Second Day except that, when the normal delivery day for Second Day Service falls on a Sunday or a holiday, and the destination facility or location does not provide Sunday or holiday delivery service or otherwise does not provide delivery service on the normal delivery day, delivery is then guaranteed on the second (delivery) business day thereafter for items tendered by the time or times specified by the Postal Service.

Persons who inquire about the expected delivery date for an Express Mail(ing) at (1) a postal retail counter, (2) the Postal Service website, or (3) by telephone, shall be

informed of the guaranteed delivery date and time upon furnishing the entry and delivery locations and the date of entry.

It is the view of the OCA that the extremely high price charged by the Postal Service for its premier product, and the guaranteed refund for customers, warrants more detailed definition than is usually included in the DMCS. The misleading nature of the phrase "Second Delivery Day" also justifies a high level of specificity in the DMCS to ensure that the public is fully and clearly informed about the service being purchased.

There is Commission precedent for a high level of detail in the DMCS when unusual circumstances call for it. In PRC Op. MC88-2, at paras. 35 and 36, the Commission held that:

Extending to the Service discretion beyond that which is needed to prevent this practice constitutes an unwarranted abnegation of our statutory responsibilities which we are not prepared to approve. . . . It is our opinion that the Postal Service does not need broad based discretion to handle this type situation.

Wherefore, the OCA respectfully request that the Commission consider OCA's proposals for joining the instant classification case and the rate case; additional opportunities to adduce evidence; or, alternatively, OCA's DMCS proposal. OCA believes it is necessary to give more guidance, and less discretion, to the Postal Service. The concept of "second delivery day" service is confusing and difficult for Postal Service employees to administer. This leads to the transmission of inaccurate information to the public. Strict guidelines in the DMCS, including specific dates (and times) of delivery for each Express Mail package tendered by the cut-off time should be provided at retail windows, the Postal Service website, and by telephone. The public must be given the information it needs to understand readily the most important aspect

of the money back guarantee being offered—that is, the calendar date (and time) by which delivery will occur or money will be refunded.

Respectfully submitted,

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