

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

CLASSIFICATION CHANGES TO CLARIFY
EXPRESS MAIL SECOND DAY SERVICE

Docket No. MC2006-4

REPLY COMMENTS OF THE UNITED STATES POSTAL SERVICE
(May 10, 2006)

The United States Postal Service hereby submits its reply comments in the above-referenced docket. In addition to the Postal Service, three participants submitted initial comments to the Commission. See David B. Popkin Comments On The Notice Of Inquiry And The Proposed DMCS Change (“Popkin Comments”); Douglas F. Carlson Response To Notice And Order Instituting Proceeding (“Carlson Comments”); Office of the Consumer Advocate Comments In Response To Order No. 1462 (“OCA Comments”).

When the Commission initiated this docket, it characterized this proceeding as “an attempt to promptly . . . harmonize” DMCS § 182.4 with DMCS § 123.1 in order to account for the fact that “in certain limited circumstances” Second Day Express Mail is guaranteed for delivery on the “second delivery day.” See Order No. 1462, Notice and Order Instituting Docket No. MC2006-4 For Classification Changes to Clarify Express Mail Second Day Service (April 18, 2006) at 1-2. Consistent with this intent, the Commission proposed a minor, “clarifying,” change to DMCS § 123.1 in order to make that provision consistent with DMCS § 182.4. See id. at 3. In its Initial Comments, the Postal Service proposed a slight alteration to the Commission’s proposal that better

achieves the Commission's desire that the DMCS be clarified in order to create consistency between those provisions.

The three other participants, in their initial comments, have not proposed any alternative DMCS language that would meet the Commission's expressed purpose in this docket.¹ Rather than proposing a minor clarifying change to the DMCS, both the OCA and Mr. Carlson propose extensive and unnecessary revisions to the DMCS.² A unifying theme among all of the comments is the assertion that the term "second delivery day" is confusing. See OCA Comments at 4, Carlson Comments at 2, Popkin Comments at 2-3. While the Postal Service does not share the belief that the term "second delivery day" is confusing, this concern is easily remedied by providing a definition of "second delivery day" in the DMCS. Thus, the Postal Service proposes that a sentence defining the term "second delivery day" be added to DMCS § 123.1, which would read: "For purposes of this schedule, the 'second delivery day' is the next delivery day following the second day." When combined with the sentence proposed by the Postal Service in its Initial Comments at 2, DMCS § 123.1 would read as follows:

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 or, in

¹ Many of the comments made by the other participants delved into topics that extend well beyond the limited scope of this proceeding. The Postal Service would like to make it clear that, given the focus of this docket on the DMCS language, it has not deemed it necessary to respond to every statement made in the other responses.

² Mr. Popkin does not propose any alternative DMCS language. Instead, at ¶ 7 of his Comments he argues that the Commission "hold discovery and appropriate hearings and briefing to determine what the public requires for Express Mail and the appropriate rates for the value of service received," and issue a report "discuss[ing] the methods that the Postal Service should utilize to inform the mailing public of the level of service for Express Mail." These requests go well beyond the scope of this Commission-initiated mail classification proceeding, and should not be granted.

certain circumstances, the second delivery day, as specified by the Postal Service. For purposes of this schedule, the "second delivery day" is the next delivery day following the second day.

These revisions to DMCS § 123.1 satisfy the purposes of this proceeding in a simple, straightforward manner. They also satisfy the various concerns expressed by the other participants that “the concept of second delivery day is not clearly addressed in the DMCS,” or that the Commission’s original proposal “leaves the term ‘Second Delivery Day’ undefined.” See OCA Comments at 3, 4.³ As so revised, the DMCS would clearly define the three delivery commitments (Next Day, Second Day, and “Second Delivery Day”) that customers receive,⁴ and would complement the more detailed information provided by the Postal Service in, for example, the chart that was recently placed on USPS.com (which is discussed by the OCA in its Comments at 5-6).

There is thus no need to adopt the more wide-ranging DMCS proposals advocated by Mr. Carlson and the OCA. Mr. Carlson proposes adding "Third Day" and "Fourth Day" Services to the DMCS or, alternatively, to not even specify service levels such as "Next Day" and "Second Day." See Carlson Comments at 5. However, the current DMCS language is not an “anachronism,” as Mr. Carlson asserts: the vast

³ Mr. Popkin and Mr. Carlson both claim that the term "second delivery day" is misleading by pointing to the fact that the term does not succinctly describe the commitment that occurs when a Second Day piece is mailed on a Saturday to a destination that does not provide Sunday and holiday delivery of Express Mail, and Monday is a holiday. In such a case, such a piece would be guaranteed for delivery on Tuesday, which can be characterized as the “next delivery day”. Popkin Comments at 2-3; Carlson Comments at 2-3. This situation is, however, the only time in which the term “second delivery day” does not succinctly describe the commitment that would be given to a Second Day piece where the “second day” is, for example, a holiday, and holiday delivery is not available at the destination ZIP Code. Considering that 1) the Postal Service’s proposed DMCS language would clearly define the term “second delivery day,” 2) customers are provided the guaranteed date of delivery on the Label 11-B, 3) the delivery commitment would be on a date *earlier* than potentially suggested by the term “second delivery day,” and 4) this represents a miniscule amount of volume (i.e., Express Mail entered on a Saturday prior to a Monday holiday), there is no need to jettison the term “second delivery day” through a fundamental revision of the DMCS language solely to take this into account.

⁴ A “next delivery day” commitment is not specified to Express Mail customers.

majority of Express Mail is guaranteed for delivery on the next day or second day, with a certain percentage guaranteed for delivery on the next delivery day following the second day. These delivery commitments are amply reflected by the current DMCS terms of “Next Day,” “Second Day,” and “second delivery day,” and are also used on the Label 11-B,⁵ on USPS.com, and in other postal publications. It is simply unnecessary to fundamentally alter the DMCS in the manner suggested by Mr. Carlson; instead, the DMCS need only be revised in the limited manner proposed by the Postal Service.

The OCA’s suggested DMCS language, meanwhile, is at certain parts incorrect and at other parts wholly beyond the proper scope of the DMCS; for both reasons, it should be rejected. The OCA proposes a three paragraph DMCS § 123.1. See OCA Comments at 7-8. The first paragraph simply tracks language currently in the DMCS that need not be altered. The second paragraph seeks to define the term “second delivery day” (and is thus essentially consistent with the approach advocated by the Postal Service above), but does so incorrectly: if a piece receives a “second delivery day” commitment, it would be guaranteed for delivery on the first delivery day following the second day rather than, as the OCA states, the “second (delivery) business day” after the second day.⁶

The OCA dedicates much of its Comments to justifying its third proposed paragraph, which would require the Postal Service to provide “date certain” delivery

⁵ Mr. Carlson emphasizes that “[c]ustomers who use Express Mail almost always want to know when their item will be delivered.” Carlson Comments at 4. He appears to ignore the fact that the Express Mail mailing label includes boxes that indicate the scheduled date and time of delivery.

⁶ This is clearly explained by note 3 of the chart on USPS.com. See OCA Comments at 6.

information via its retail counters, 1-800-ASK-USPS, and USPS.com. However, the OCA simply provides no basis for such unique and detailed verbiage in the DMCS.

Based on Commission precedent, the third paragraph proposed by the OCA clearly falls outside of the scope of the DMCS. The function of the DMCS is to differentiate the classes of mail through the establishment of the general terms and conditions applicable to each, for the purpose of assigning rates. See PRC Op. MC95-1, at II-20. As the Commission has noted, the DMCS is a “definitional” document that “describe[s] and differentiate[s the] characteristics of mail embraced within the various [mail] classes,” based on factors such as “size, weight, content, ease of handling, and identity of both posting party and recipient,” so that a specific rate or method of handling can be assigned to that mail matter. See PRC Op. MC88-2, at 9.⁷ Consistent with this purpose, the Commission has held that the DMCS should not include matters that are “too remotely related to the ability to distinguish among different classes and rate categories.” See PRC Op. MC 95-1, at II-20.⁸ There is thus nothing in the DMCS that imposes a specific requirement on how the Postal Service must interface with its customers that is analogous to what is suggested by the OCA in its third paragraph.

The OCA itself seems to recognize that its third paragraph falls outside the scope of the DMCS, but nevertheless asserts that the inclusion of this language in the DMCS would be consistent with Commission precedent. See OCA Comments at 8. The precedent that OCA cites, however, is inapposite to the situation presented here.

⁷ See also PRC Op. MC95-1, at II-19-20; PRC Op. MC76-5, at 29. In PRC Op. MC88-2, the Commission noted that the DMCS “is definitional in that its purpose is to unambiguously describe and differentiate characteristics of mail embraced within the various classes of mail.” PRC Op. MC88-2 at 9.

⁸ See PRC Op. MC 95-1, at II-20. As such, the DMCS has provisions that distinguish among the classes of mail by reference to factors such as the means of deposit and delivery, postage and preparation requirements, forwarding and return, and size/weight/dimension standards.

Docket No. MC88-2 concerned the drafting of DMCS language in order to ensure that all so-called “Plus” issues of newspapers were ineligible for second-class (now Periodicals) rates. The Commission rejected several proposals to craft DMCS language that would have given the Postal Service wide discretion in determining the scope of the eligibility provision at issue. The Commission noted that “in the first instance it...has the primary responsibility over determining the constituent elements of a class of mail,” and said that allowing the Postal Service wide discretion in determining the eligibility issue presented there (specifically, the specification of frequency of publication as part of determining whether a publication was a “separate publication” for second-class rates purposes) would be “an abnegation of [its] statutory responsibilities.” See PRC Op. MC88-2 at 17.

Docket No. MC88-2 thus involved a quintessential classification issue—the determination of whether certain mailable matter was eligible for the rates of a particular class of mail—in which the Commission held that it would be contrary to statute for it to give the Postal Service open-ended discretion with regard to an integral element of that eligibility determination. This holding does not establish a precedent for the inclusion of the OCA’s third proposed paragraph into the DMCS. The language proposed by the OCA has no relationship to the eligibility of mailable matter for Express Mail, or any other classification issue regarding Express Mail. In the end, therefore, the OCA fails to bring forth any precedent that would warrant the amending of the DMCS in the manner it proposes.

Finally, the OCA’s request that this docket be joined with Docket No. R2006-1 is unnecessary, either for the purposes enunciated by the Commission in initiating this

proceeding, or for the purposes identified by the OCA. The OCA states that merging this docket into the omnibus case would “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.” While the OCA is certainly free to propound interrogatories on that topic in the rate case, subject to the usual constraints of relevance and privilege, its declared intention to do so has no effect on this limited proceeding. The Postal Service has, in these comments, proposed a revised DMCS § 123.1 that succinctly and clearly satisfies the Commission’s purpose in initiating this docket—to “promptly remedy” the inconsistency between DMCS §§ 123.1 and 182.4. It is unnecessary for the Commission to delay a resolution of this issue by merging this docket with the rate case.

In conclusion, the Postal Service does not believe that any further proceedings are warranted in this docket.⁹ Instead, the Commission should simply adopt the DMCS language proposed by the Postal Service above.

Respectfully submitted,

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⁹ To the extent the Commission concludes otherwise, at most there need only be a third round of comments, as suggested by Mr. Carlson in his Comments at 6. The OCA has certainly not demonstrated any need for hearings or why a Postal Service witness “who can testify on the operation of the Express Mail network, its limitations, and the type of information provided to the public” is at all necessary, considering the limited scope of this proceeding.

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