

UNITED STATES OF AMERICA  
POSTAL RATE COMMISSION

*Before:*

Chairman Omas,  
Vice Chairman Tisdale,  
and Commissioners  
Goldway and Hammond

Classification Changes for Express Mail  
Second Day Service

Docket No. MC2006-4

OPINION  
AND  
RECOMMENDED DECISION



Washington, DC 20268-0001  
June 21, 2006

## TABLE OF CONTENTS

	<i>Page</i>
I. Summary .....	1
II. Procedural History .....	2
III. Scope of This Proceeding .....	3
IV. Findings and Conclusions .....	4
A. Additional Procedural Steps are Unnecessary .....	4
B. DMCS Language Change Proposals .....	6

RECOMMENDED DECISION

APPENDIX ONE

APPENDIX A

## I. SUMMARY

[1001] The Commission finds that as modified in this Opinion, the recommended amendments to the Domestic Mail Classification Schedule (DMCS) language related to Express Mail Second Day Service are in the best interest of the Postal Service and the mailing community. These recommended changes promptly remedy the inconsistencies and ambiguities regarding Second Day Service's second delivery day offering by defining the term in the DMCS. The revisions allow consumers to better understand the scope of Express Mail service in light of the changes to the service detailed in Docket No. C2005-1.<sup>1</sup>

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<sup>1</sup> See *generally*, PRC Order No. 1461.

## II. PROCEDURAL HISTORY

[2001] On April 18, 2006, in response to the issues brought to light in a previously filed Complaint on Express Mail,<sup>2</sup> the Commission initiated a mail classification case to consider and clarify ambiguous language related to Express Mail Second Day Service.<sup>3</sup> As part of that Order, the Commission designated the Director of the Commission's Office of the Consumer Advocate (OCA) as the representative of the interests of the general public, established the deadline for intervention, and sought suggestions for an appropriate procedural schedule given the limited scope of the case. The Commission's Order also contained a Notice of Inquiry in which the Commission sought comments on a proposal to revise the current "availability" subsection of the Expedited Mail section of the Domestic Mail Classification Schedule (DMCS) to "clearly state in the DMCS the scope of Second Day Express Mail service that the Postal Service intends to provide its customers."<sup>4</sup> The Postal Service, Douglas F. Carlson, David B. Popkin, and the OCA filed comments in response to the Order and the Notice of Inquiry on May 3 and 4, 2006.<sup>5</sup> The Postal Service filed reply comments on May 10, 2006.<sup>6</sup>

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<sup>2</sup> See Docket No. C2005-1.

<sup>3</sup> PRC Order No. 1462 (April 18, 2006).

<sup>4</sup> *Id.* at 1-2.

<sup>5</sup> Initial Comments of United States Postal Service (Postal Service Comments); Douglas F. Carlson Response to Notice and Order Instituting Proceeding (Carlson Comments); David B. Popkin Comments on the Notice of Inquiry and the Proposed DMCS Change (Popkin Comments), all filed on May 3, 2006; Office of the Consumer Advocate Comments in Response to Order No. 1462, May 4, 2006 (OCA Comments).

<sup>6</sup> Reply Comments of the United States Postal Service, May 10, 2006 (Postal Service Reply Comments).

### III. SCOPE OF THIS PROCEEDING

[3001] Before discussing the issues of this case, it is important to note the scope of this classification case. The Commission is not, as Mr. Popkin requests, considering whether the changes in Second Day Express Mail service are in the public interest and the appropriate rates for the Second Delivery Day Express Mail service.<sup>7</sup> It also is not an appropriate forum, as OCA implies, to explore how the Postal Service informs the public about its Express Mail service offerings or how it might improve its efforts.<sup>8</sup>

[3002] The Commission initiated the current classification proceeding to clarify “in the DMCS the scope of Second Day Express Mail service that the Postal Service intends to provide its customers.”<sup>9</sup> The Commission has concerns with existing inaccurate DMCS language calling for second day delivery, when, in certain limited circumstances, the Postal Service admits that it does not expect to provide delivery until the third or fourth day. Such a practice is undesirable and confusing to customers. The Commission seeks to promptly remedy this confusion and the inconsistency in the DMCS between the refund and availability Express Mail sections.<sup>10</sup> Prompt correction of this inaccurate DMCS language is the primary purpose of this limited proceeding. Participants having concerns with other issues relating to Express Mail Service beyond the scope of this proceeding may, if appropriate, pursue them in the R2006-1 rate case which is currently pending before the Commission.

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<sup>7</sup> Popkin Comments at 3. Some of these issues were already addressed in response to the original Express Mail Complaint. See Docket No. C2005-1, PRC Order 1461, April 18, 2006.

<sup>8</sup> OCA Comments at 1-2; *see also* Popkin Comments at 3. To that end, OCA requests that the Commission join this case with the R2006-1 rate case currently pending before the Commission. OCA believes that the rate case will provide a convenient forum to explore the methods that the Postal Service uses to inform the public about its Express Mail service offerings. OCA is free to explore these issues in the pending rate case, Docket No. R2006-1. However, joining this limited classification case with the rate case will not further the primary purpose of this proceeding. Accordingly, the Commission will not merge this case with R2006-1.

<sup>9</sup> PRC Order No. 1462 at 1-2.

<sup>10</sup> *Id.* at 2.

## IV. FINDINGS AND CONCLUSIONS

### A. Additional Procedural Steps are Unnecessary

[4001] Several participants ask the Commission to allow for additional procedural steps before deciding on how to best clarify the admittedly inaccurate DMCS language. OCA requests that the Commission hold hearings and that a Postal Service witness be directed to testify.<sup>11</sup> OCA believes that actual evidence is a necessary prerequisite to choosing the most accurate language to inform consumers about what to expect when they purchase Express Mail.<sup>12</sup> However, OCA has not demonstrated how holding hearings or requiring a Postal Service witness to testify can help the Commission choose more appropriate descriptive language of Second Day Service's second delivery day offering or "promptly remedy" the inconsistencies in the DMCS related to such service. This is especially true given that OCA has not identified any factual disputes.<sup>13</sup> To the extent that additional evidence may result in better descriptive language, OCA and other participants are free to explore or revisit these issues and obtain additional evidence on the matter in the pending rate case and propose additional clarifying or alternative language at the appropriate stages of that case.

[4002] Mr. Carlson requests that a third round of comments to allow participants to answer reply comments filed on May 10, 2006, given that his response introduces a new concept not likely to appear in the Postal Service's opening comments. The Commission does not believe that a third round of comments is necessary. Mr. Carlson's suggestions on improving and overhauling the Express Mail service to provide for actual delivery

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<sup>11</sup> OCA Comments at 3.

<sup>12</sup> *Id.* at 2.

<sup>13</sup> Additionally, Mr. Carlson states that "[t]o the extent that the reply comments filed on May 10, 2006, reveal factual disputes, a hearing would be in order to ensure participants' due process..." Carlson Comments at 6. The Commission agrees with this contention. However, the pleadings do not demonstrate any genuine issue of material facts. As a result, no hearing is required on that basis.

days instead of using the term “second delivery day” service is a reasonably foreseeable logical outgrowth of the Commission’s proposal. As such, the participants were fairly apprised that such a proposal could be raised, and no participant expressed surprise at Mr. Carlson’s suggestions. Indeed, Mr. Carlson’s proposal is similar to an alternative proposal suggested by OCA that the Postal Service provide “an expected *date certain*” for delivery.<sup>14</sup> Further, the Postal Service was the only participant to file reply comments, and those comments did not raise any new arguments that Mr. Carlson or any other participant did not have an opportunity to address in the two rounds of comments allowed by the Commission. Accordingly, the Commission does not find that a third round of comments is necessary or would be helpful in deciding the issues in this case.

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<sup>14</sup> Compare Carlson Comments at 4-6 with OCA Comments at 6-7 (emphasis in original).

## B. DMCS Language Change Proposals

[4003] In an attempt to promptly clarify in the DMCS the scope of the Second Day Express Mail service that the Postal Service intends to provide its customers, the Commission proposed revising the last sentence of DMCS section 123.1 to the following: “Second Day Service is available for delivery on the second delivery day as specified by the Postal Service.” The Commission suggested such language as a way to harmonize the “refund” section of the Express Mail DMCS language regarding Second Day service with the “availability” section. Several participants suggested improvements and changes to the Commission’s proposed language.<sup>15</sup>

[4004] Mr. Carlson comments that the term “second delivery day” is vague and ambiguous, and the Postal Service’s use of the term is not the same as its literal meaning.<sup>16</sup> Mr. Carlson illustrates his point using the following hypothetical situation: Suppose that an Express Mail piece is mailed on a Saturday to a destination that does not provide Sunday or holiday Express Mail delivery, and Monday is a holiday. Such a mailpiece would be guaranteed for delivery on Tuesday, which is the “next delivery day” because the literal meaning of “second delivery day” is Wednesday (since Sunday and Monday are not “delivery days” for this destination). Accordingly, Mr. Carlson believes that the term “second delivery day” should be abandoned and that the Commission should adopt DMCS language that requires the Postal Service to specify the number of calendar days for delivery — one, two, three, or four days<sup>17</sup> — in order to inform consumers of the realities of current Express Mail service in clear terms. Alternatively,

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<sup>15</sup> See generally, Carlson Comments; Popkin Comments; OCA Comments.

<sup>16</sup> Carlson Comments at 2.

<sup>17</sup> Mr. Popkin believes that sometimes “fifth calendar day” delivery exists when an article is mailed on a Thursday before a Monday holiday after the established cut-off time to a destination that does not provide Sunday or holiday delivery and requires two-day transportation. The article would then be delivered on Tuesday, or the fifth calendar day after mailing. Popkin Comments at 2 & n.4-5.

he argues that the Commission should abandon the “second delivery day” term and instead create a “third day” and “fourth day” service.

[4005] OCA’s proposed revisions to the DMCS are in line with Mr. Carlson’s comments. OCA submits that the term “second delivery day” is not clearly addressed or defined in the DMCS, nor does it lend itself to ready definition. OCA believes that the concept of “second delivery day” is a “poorly explained, confusing ‘moving target’ for the customers of Express Mail service.”<sup>18</sup> As a potential solution, OCA proposes a lengthy three paragraph DMCS provision that defines the term second delivery day and further directs the Postal Service to provide the guaranteed delivery date upon furnishing the entry/delivery locations and the date of entry by website, phone, or at a retail counter.<sup>19</sup> OCA believes that this level of detail is desirable to provide customers the clarity they need to enforce a claim for a refund in the event that the Postal Service does not meet its guaranteed service commitment and to ensure that the public is fully and clearly informed about the service it purchases. OCA believes that its very specific DMCS language proposal is warranted in view of the extremely high price charged for Express Mail.

[4006] In support of its position that a high level of detail in the DMCS is warranted, OCA cites PRC Op. MC88-2. Docket No. MC88-2 deals with drafting DMCS language in order to ensure that certain so-called “Plus” issues of newspapers would be ineligible for Periodicals rates.<sup>20</sup> In that case, 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. OCA argues that this case stands for the

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<sup>18</sup> OCA Comments at 4. To that end, OCA notes that is has worked closely with the Postal Service to bring customers detailed information regarding actual day of the week delivery dates for Express Mail service. *Id.* at 5-7. All efforts directed at providing greater transparency and openness with respect to postal services is a laudable goal. OCA and the Postal Service are to be commended for their hard work in this respect.

<sup>19</sup> *Id.* at 7-8. Mr. Carlson has similar concerns. Carlson Comments at 4. The Postal Service points out in a footnote that the Express Mail mailing label includes boxes that indicate the scheduled date and time of delivery. Postal Service Reply Comments at 4 n.5.

<sup>20</sup> PRC Op. MC88-2 at ¶¶ 34-37.

proposition that the Commission can require very specific DMCS language when unusual circumstances warrant it such as Express Mail Second Day Service's second delivery day component. The Postal Service disagrees with OCA's characterization of the Commission's holding in that case. In the Postal Service's view, Docket No. MC88-2's rationale for applying detailed DMCS language is limited to situations where the Commission finds that it is contrary to statute to give the Postal Service open-ended discretion with regard to the scope of DMCS provisions.

[4007] The Postal Service's interpretation of the Commission's opinion in Docket No. MC88-2 is inappropriately narrow. Under ordinary circumstances, the DMCS is a "definitional" document that "describe[s] and differentiate[s] characteristics of mail embraced within the various classes of mail."<sup>21</sup> The Commission has also noted that the DMCS should not include information that is "too remotely related to the ability to distinguish among different classes and rate categories... ." <sup>22</sup> However, circumstances may exist that, although not contrary to law, are nonetheless, reasonably related to the consumer's ability to distinguish between classes and rate categories and, therefore, worthy of detailed DMCS language.

[4008] In its reply comments, the Postal Service suggests that other participants' concerns that the term "second delivery day" is confusing can be "easily" remedied by providing a definition of "second delivery day" in the DMCS. Thus, the Postal Service proposes that a sentence be added to DMCS section 123.1 which would read: "For purposes of this schedule, the 'second delivery day' is the next delivery day following the second day."<sup>23</sup> Given that a second delivery day guarantee for Express Mail occurs only in certain, limited circumstances, the Postal Service also suggests the Commission's proposed language regarding the availability of second day service be changed in order

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<sup>21</sup> *Id.* at 9.

<sup>22</sup> PRC Op. MC95-1 at II-20.

<sup>23</sup> Postal Service Reply Comments at 2.

to reflect that reality.<sup>24</sup> Accordingly, the Postal Service proposes that DMCS section 123.1 be modified as stated below:

**123.1 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 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.

The Postal Service believes that these modifications will remedy the perceived confusion expressed by the other participants in this case without reaching outside the proper scope of this classification proceeding.

[4009] *Commission Analysis.* The Commission finds that the Postal Service’s suggested revisions to DMCS section 123.1 better clarify the inconsistent DMCS language than the language originally proposed by the Commission. Further, the Postal Service’s revisions alleviate many of the concerns expressed by the participants. Participant concerns that the term second delivery day is misleading or confusing are tempered by clearly defining “second delivery day” in the DMCS. The Postal Service’s definition also encompasses the “next delivery day” situations brought up by Mr. Carlson and Mr. Popkin thereby making additional proposed revisions unnecessary. The Postal Service’s definition of second delivery day is preferable to OCA’s proposed definition because it is simpler and easier to understand. Accordingly, the Commission recommends the DMCS amendment as suggested by the Postal Service.

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<sup>24</sup> Postal Service Comments at 2.

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Before Commissioners:                   George A. Omas, Chairman;  
  Dawn A. Tisdale, Vice Chairman;  
  Ruth Y. Goldway; and  
  Tony Hammond

Classification Changes for Express  
Mail Second Day Service

Docket No. MC2006-4

RECOMMENDED DECISION

(Issued 21, 2006)

The Commission, having considered the issues raised in this proceeding, has issued its Opinion thereon. Based on that Opinion, which is attached hereto and made a part hereof,

IT IS ORDERED:

1. The Commission's Opinion and Recommended Decision shall be transmitted to the Governors and shall thereby be advised that the amendments to the Domestic Mail Classification Schedule (set forth in Appendix One) are in accordance with the policies of Title 39, United States Code, and the factors set forth in §§ 3622(b) and 3623(c) thereof, and are hereby recommended to the Governors for approval.

2. Except to the extent granted or otherwise disposed of herein, all pending motions, exceptions, and other outstanding requests filed in Docket No. MC2006-4 hereby are denied.

By the Commission.  
(S E A L)

Steven W. Williams  
Secretary

**RECOMMENDED CHANGES IN  
DOMESTIC MAIL CLASSIFICATION SCHEDULE**

The following material represents changes to the Domestic Mail Classification Schedule recommended by the Postal Rate Commission in response to the issues raised in Docket No. MC2006-4. The underlined text signifies that the text is new and shall appear in addition to all other Domestic Mail Classification Schedule text. Deleted text is indicated by a strikethrough.

**EXPEDITED MAIL  
CLASSIFICATION SCHEDULE**

**123 Next Day Service and Second Day Service**

**123.1 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 ~~second day~~ second day delivery on the second day or, in 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.

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