

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

COMPLAINT OF GAMEFLY, INC.

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Docket No. C2009-1

**FIRST DISCOVERY REQUESTS OF GAMEFLY, INC.,
TO THE UNITED STATES POSTAL SERVICE
(GFL/USPS-1 through -65)**

Pursuant to Rules 25 through 27 of the Rules of Practice and Procedure of the Postal Regulatory Commission, GameFly, Inc. (“GameFly” or “GFL”) respectfully submits the following discovery requests to the United States Postal Service (“Postal Service”).

Respectfully submitted,

David M. Levy
Jennifer T. Mallon
Matthew Field
VENABLE LLP
575 7th Street, N.W.
Washington, DC 20004
(202) 344-4800

Counsel for GameFly, Inc.

July 31, 2009

INSTRUCTIONS AND DEFINITIONS

A. Instructions

1. These discovery requests impose a continuing obligation to respond and to provide additional information as it becomes available.
2. If no information or documents are responsive to any of these discovery requests, please so indicate.
3. For each data request, please identify the preparer or the person under whose direct supervision the response was prepared.
4. Please specify the data request to which each document applies. If a document or narrative response applies to more than one request, please provide a cross reference.
5. For data requests calling for the production of documents, please provide legible, true, and complete copies of the documents. If a responsive document has been lost or destroyed, or is otherwise unavailable, please follow Instruction 12 below.
6. Where a data request specifically requests a narrative response rather than the production of documents alone, a narrative response is required and the production of documents does not substitute for a narrative response.
7. These data requests are to be construed broadly to elicit all requested information which is discoverable under the Commission's Rules of Practice. Accordingly,
 - a. The present tense includes the past tense and the past tense includes the present tense, and
 - b. The singular includes the plural and the plural includes the singular.
8. The section headings in these discovery requests are provided solely for the convenience of the reader, and are not intended as restrictions on the scope of the information sought.

9. If any responsive information is not available in the form requested, please provide the available information or documents which best responds to the data request.
10. The time period covered by each question is limited to the period since November 1, 2007, unless the question (a) specifies a different time period, or (b) seeks production of the documents or information on which the Postal Service relies in support of a statement, claim or proposition.
11. These data requests apply to all responsive information and documents in your possession, custody, and control, or in the possession, custody, or control of your attorneys, witnesses, or other agents, from all files, wherever located, including active and inactive files and including electronic files.
12. If any responsive information or document is not in your possession, custody, or control, but you know or believe that it exists, please identify the information or document and indicate to the best of your ability the location and custodian of the information or document.
13. If any document responsive to any of these data requests has been destroyed or is otherwise unavailable, please identify and describe:
 - a. The subject matter and content of the document,
 - b. All persons involved in the destruction or removal of the document,
 - c. The date of the document's destruction or removal, and
 - d. The reasons for the destruction or other unavailability of the document.
14. If you assert any claim of privilege or discovery immunity in response to any data request, please identify each document withheld and state:
 - a. The document's title and type,
 - b. The privilege or immunity claimed and the basis for claiming such privilege or immunity,

- c. Each person who prepared, signed, or transmitted the document,
 - d. Each person to whom the document, or any copy of the document, was addressed or transmitted,
 - e. The date of the document, and
 - f. The subject matter of the document.
15. For each response which is generated by a computer or electronic data storage mechanism, please state:
- a. The name of the file from which the response came,
 - b. How the data are stored (punch cards, tapes, disks, etc.),
 - c. How the data are transmitted and received, and
 - d. The name of each person who collected the data or entered the data into the computer or electronic data storage mechanism.
16. For any requests with subparts, please provide a complete separate response to each subpart as if the subpart was propounded separately.
17. If information or documents responsive to any of these data requests has previously been provided in this proceeding in response to a discovery request by any participant, please provide a specific cross-reference. There is no need to make a duplicate response.
18. If you perceive any ambiguity in interpreting any data request, or any instruction or definition applicable thereto, please secure a clarification from counsel for GameFly as soon as the ambiguity is perceived.

B. Definitions

1. "Answer" refers to the Answer of the United States Postal Service submitted on May 26, 2009.

2. "Communication" means any correspondence, contact, discussion or exchange between any two or more persons. The term includes, but is not limited to, all documents, telephone conversations or face-to-face conversations, electronic mail, conferences or other meetings.
3. "Document" means any written, recorded, computer-stored, computer-generated or graphic material however stored, produced or reproduced. The term is to be construed to the full extent of the definition in Rule 34 of the Federal Rules of Civil Procedure. Any document that is not exactly identical to another document for any reason, including but not limited to marginal notations or deletions, is a separate document.
4. "DVD" means an optical disc storage medium also known as "Digital Versatile Disc" or "Digital Video Disc." As used in these questions, the term encompasses movie, music and game DVDs, and next-generation High Definition optical formats (such as Blu-ray Disc) as well as the standard definition format.
5. "DVD mailer" and "lightweight mailer" mean a mailpiece consisting of a DVD in a specialized mailing envelope, which may also include a protective insert. As used in these questions, the terms "DVD mailer" and "lightweight mailer" do not refer to mailpieces with DVDs in hard plastic jewel cases.
6. "Each" includes the term "every" and "every" includes the term "each." "Any" includes the term "all" and "all" includes the term "any." "And" includes the term "or" and "or" includes the term "and."
7. "Identify" means to state as follows:
 - a. With respect to a document and to the extent that the following information is not readily apparent from the document itself: (i) the document's title, date, author(s), signer(s), sender(s), addressee(s) and recipient(s); (ii) the type of document (e.g., letter, memorandum, agreement, invoice) its location and custodian; and (iii) a detailed description of its contents or principal terms and provisions.

- b. With respect to a communication and to the extent the following information is not readily apparent: (i) the time, date and place of the communication; (ii) all maker(s) and recipient(s) of the communication; (iii) the mode of communication; (iv) the subject matter of the communication; and (v) any document generated in connection with the communication.
 - c. With respect to a person and to the extent the following information is not readily apparent: (i) the person's full name; (ii) the person's employer, job title, and a brief description of the person's current duties and duties at the time relevant to the data request; and (iii) the person's business address.
- 8. "Joint Statement of Undisputed and Disputed Facts" refers to the Joint Statement of Undisputed and Disputed Facts filed by the parties on July 20, 2009.
 - 9. "OIG report" means OIG Audit Report No. MS-AR-08-001, *Review of Postal Service First-Class Permit Reply Mail* (issued November 8, 2007).
 - 10. "Postal Service" or "USPS" refers to the United States Postal Service, including USPS Headquarters and any subordinate department, division, or office of the USPS, whether at the national, area, district or local level. This definition includes the officers, directors, agents and employees of the United States Postal Service and its Board of Governors.
 - 11. "You" and "your" refers to the Postal Service, as indicated by the context of the question, as described in definition 2 supra.
 - 12. The terms "related to" or "relating to" mean being in any way relevant to, commenting on, consisting of, referring to, composing, comprising, discussing, evidencing, identifying, involving, reflecting, or underlying.
 - 13. The terms "state," "describe" and "explain" call for answers independent from any documents that are required in response to these data requests. Such answers should be in a form (e.g., narrative, tabular) appropriate to a complete response to the request.

QUESTIONS

The Postal Service's Service Commitments To Netflix

GFL/USPS-1. This question concerns the evaluation of Netflix DVD mailpieces by the Postal Service's engineering group in June 2002 (see Joint Statement of Undisputed and Disputed Facts at ¶¶ 75 and 76):

- (a) Please identify the individuals in the Postal Service's engineering group who were involved in the evaluation.
- (b) Please confirm that Exhibit GFL/USPS-1A (attached hereto) is a true and accurate copy of a letter dated June 24, 2002, from Ms. Sherry Freda of the Postal Service to Mr. Tom Dillon of Netflix. If you do not confirm without qualification, please explain fully.
- (c) Please produce a copy of the "June 11 letter from Mr. Laws (copy attached)" referenced in Exhibit GFL/USPS-1A.
- (d) Please produce all other documents generated by the Postal Service personnel (including but not limited to employees in the Engineering, Marketing and Mailing Standards groups) in connection with the evaluation.
- (e) What conclusions did Mr. Laws and other Postal Service engineering employees who evaluated the Netflix DVD mailer reach on or about June 11, 2002, concerning its effectiveness (or likely effectiveness) in protecting against DVD breakage from automated letter processing?

- (f) If the conclusions reached by George Laws and other the Postal Service engineering employees on or about June 11, 2002, concerning the effectiveness (or likely effectiveness) of the Netflix DVD mailer in protecting against DVD breakage from automated letter processing were not reduced to writing (or were reduced to writing in documents that the Postal Service has misplaced, lost or destroyed), please identify the engineering employees who were involved in reaching the conclusions.

MAIL PREPARATION AND STANDARDS



COPY

June 24, 2002

Mr. Tom Dillon
Vice President of Operations
Netflix
2219 Oakland Road
San Jose, CA 95131-1402

Dear Mr. Dillon:

This responds to your June 17 email message to Anita Blazotta, U.S. Postal Service, Chief Marketing Officer, and George Laws, U.S. Postal Service, manager of Letter Mail Technology, about the automation-compatibility tests conducted on letter-size mailpieces containing DVDs that your company sent on May 22 to our Engineering Department. As a point of clarification, the tests indicated that the reusable mailpieces were automation-compatible when outbound and thus would be eligible for automation letter rates.

As reported in the June 11 letter from Mr. Laws (copy attached), the tests also established that the return pieces, although not completely automation-compatible, were machineable. The return pieces were, for example, able to make the turns on the delivery barcode sorter and the advanced facer copier. Moreover, the samples did bend easily when subjected to a transport belt tension of 40 pounds around an 11-inch diameter turn without any apparent damage or sortation problems.

As a result, the return pieces tested would not be subject to the nonmachineable surcharge effective June 30, 2002, for mailpieces that must be handled manually. The determinations for the outbound processing and the inbound processing apply only to the samples submitted. If any changes are made to the design or construction of these mailpieces, they would have to be retested for machineability.


Sherry Freda
Manager

Enclosure

cc: George Laws, manager, Letter Mail Technology

PC:MPS:BergerNetfb0824

GFL/USPS-2. Please produce all communications (a) within the Postal Service, or (b) between the Postal Service and Netflix, since June 11, 2002, concerning:

- (a) The letter issued on or about June 11, 2002, by George Laws concerning Netflix DVD mailers.
- (b) Any other conclusions reached by George Laws or other USPS employees on or about June 11, 2002, concerning Netflix DVD mailers.
- (c) Efforts made by Netflix in June 2002 to persuade the Postal Service to modify or overrule the findings of the Postal Service's engineering department with respect to Netflix DVD mailers.
- (d) The matters discussed in the letter dated June 24, 2002, from Ms. Sherry Freda to Mr. Tom Dillon.
- (e) The findings set forth in the letter dated June 24, 2002, from Ms. Freda to Mr. Dillon.

GFL/USPS-3. Please produce all documents reflecting any written communication or relating to any oral communication since June 1, 2002, with Reed Hastings, Tom Dillon, William Henderson or Andrew Rendich concerning any of the following matters:

- (a) The degree of manual culling or priority processing received by Netflix DVD mailers;
- (b) The machinability or automation compatibility of Netflix DVD mailers;
- (c) The continued eligibility of Netflix DVD mailers for letter rates;
- (d) The speed and reliability of delivery of Netflix DVD mailers; or
- (e) Any other aspect of the service performance received by Netflix.

GFL/USPS-4. Please produce all documents reflecting any written communication or relating to any oral communication since June 1, 2002, with any in-house or outside attorney of Netflix concerning any of the following matters:

- (a) The degree of manual culling or priority processing received by Netflix DVD mailers;
- (b) The machinability or automation compatibility of Netflix DVD mailers;
- (c) The continued eligibility of Netflix DVD mailers for letter rates;
- (d) The speed and reliability of delivery of Netflix DVD mailers; or
- (e) Any other aspect of the service performance received by Netflix.

GFL/USPS-5. Please produce the following items relating to the OIG report:

- (a) The photographs and other matter redacted from pages 1 and 6 of the report.
- (b) The matter redacted from page 18 and Appendix B of the report.

GFL/USPS-6. Please produce all written communications between any employee or agent of the Postal Service and any employee or agent of Netflix since November 1, 2007, concerning any of the following matters:

- (a) The rates, classifications, mail preparation requirements, or standards for processing offered by the Postal Service to Netflix.
- (b) Any rate or service arrangement (whether formal or informal) established by the Postal Service for Netflix.
- (c) The terms of service established by the Postal Service for the DVD mail of Netflix.
- (d) The Postal Service's actual performance in processing and delivering DVDs to or from Netflix.
- (e) The breakage or loss of DVDs sent to or from Netflix.
- (f) The OIG report, or the investigation that led to the OIG report.
- (g) Changes in the Postal Service's preparation requirements for and handling of the DVD mail of Netflix after the issuance of the OIG report.

- (h) Possible changes in rates, fees, mail preparation requirements, or processing procedures for the DVD mail of Netflix.

GFL/USPS-7. Please produce all documents, studies, analyses, workpapers, memoranda and similar documents created since January 1, 2005, relating to the establishment of Permit Reply Mail ("PRM").

GFL/USPS-8. Please produce all documents relating to communications between the Postal Service and Netflix concerning the establishment of Permit Reply Mail ("PRM") since January 1, 2005.

GFL/USPS-9. This question refers to Paragraph 92 of the parties' July 20, 2009, Joint Statement of Undisputed and Disputed Facts. Paragraph 92 contains the following stipulation: "Since 2007, Postal Service Engineering has concluded that seven two-way DVD mailers submitted by several companies other than Netflix were operationally nonmachinable. These mailers were of similar size, weight, and construction to the Netflix two-way DVD mailer determined by Postal Service Mailing Standards in 2002 to be machinable."

- (a) Has the Postal Service imposed a nonmachinable surcharge on any of the seven two-way DVD mailers? Please explain why or why not.
- (b) Has the Postal Service imposed a nonmachinable surcharge on the admittedly "similar" Netflix mailer since 2007? Please explain why or why not.

- (c) Please identify any preference in rates or terms of service that the Postal Service has offered to the Netflix DVD mailer vis-à-vis the seven “similar” DVD mailers since the beginning of 2007.
- (d) Please produce documents sufficient to verify your responses to parts (a) through (c).
- (e) Please produce all other data, studies, analyses, memoranda or other communications within the Postal Service (or with a contractor or consultant to the Postal Service) since January 1, 2007, concerning the matters raised in parts (a) through (c).
- (f) Please produce all communications since January 1, 2007, between the Postal Service and any person outside the Postal Service concerning the matters raised in parts (a) through (c).

GFL/USPS-10. This question concerns the changes in mailing standards for DVD mailers announced by the Postal Service in *Postal Bulletin* 22239 (August 14, 2008) at 64, and codified at DMM 201.3.1 *et seq.* The last sentence of the explanatory material in the *Postal Bulletin* announcement states: “Mailpieces previously approved in writing by the USPS® for automation prices continue to qualify for those standards even if they do not meet the new optional standards.”

- (a) Have the two-way mailers used by Netflix been “previously approved in writing by the USPS® for automation prices”?

- (b) Have the two-way mailers used by any other DVD rental company been “previously approved in writing by the USPS® for automation prices”?
- (c) If the answer to (a) is yes and the answer to (b) is no, please explain why you believe that this preference for Netflix is appropriate.
- (d) Please produce all documents, studies and analyses that support your response to part (c).
- (e) Please produce any other documents, studies, analyses, memoranda or communications created since January 1, 2005, concerning the appropriateness of the preference referred to in part (c).

GFL/USPS-11. Since January 1, 2005, have any employees of the Postal Service’s headquarters pricing, marketing or engineering departments described the terms of service provided by the Postal Service to Netflix for its DVD mailers as a “black market NSA,” “secret NSA” or in other terms of a similar import? If so, please identify the employees, describes the circumstances, and produce any documents reflecting such descriptions.

The Service Offered By The Postal Service To Blockbuster

GFL/USPS-12. Please produce all documents created since February 23, 2006, reflecting any written communications or relating to any oral communications between the Postal Service and Blockbuster relating to Blockbuster’s request on February 23, 2006, for manual culling and processing of inbound mail pieces for Blockbuster Online or the Postal Service’s response to that request.

GFL/USPS-13. Please produce any studies, analyses or internal communications created since February 23, 2006, concerning Blockbuster's request on February 23, 2006, for manual culling and processing of inbound mail pieces for Blockbuster Online or the Postal Service's response to that request.

GFL/USPS-14. Please produce all documents reflecting any written communication or relating to any oral communication since February 23, 2006, with any Blockbuster senior executive (i.e., assistant vice president or higher) or any attorney for Blockbuster concerning any of the following matters:

- (a) The degree of manual culling or priority processing received by Blockbuster DVD mailers;
- (b) The machinability or automation compatibility of Blockbuster DVD mailers;
- (c) The continued eligibility of Blockbuster DVD mailers for letter rates;
- (d) The speed and reliability of mail processing and delivery provided to Blockbuster DVD mailers; or
- (e) Any other aspect of the service performance received by Blockbuster.

**The Terms Of Service Offered To DVD Rental Companies
Other Than Netflix, Blockbuster Or GameFly**

GFL/USPS-15. Please produce all written communications with any DVD rental company other than Netflix, Blockbuster or GameFly since November 2007 concerning any of the following matters:

- (a) The rates, classifications, mail preparation requirements, or standards for processing offered by the Postal Service to that company.
- (b) Any rate or service arrangement (whether formal or informal) established by the Postal Service for that company.
- (c) The terms of service established by the Postal Service for the DVD mail of that company.
- (d) The Postal Service's actual performance in processing and delivering DVDs to or from that company.
- (e) The breakage or loss of DVDs sent to or from that company.
- (f) The OIG report, or the investigation that led to the OIG report.
- (g) Changes in the Postal Service's preparation requirements for and handling of the DVD mail of that company after the issuance of the OIG report.
- (h) Possible changes in rates, fees, mail preparation requirements, or processing procedures for the DVD mail of that company.

Asserted Changes In DVD Mail Processing Since the OIG Report

GFL/USPS-16. Please produce all studies, analyses, reports, internal reviews, memoranda, and similar documents relating to the following matters:

- (a) All changes implemented by the Postal Service after October 25, 2007, to the physical standards for DVD mailers entered at First-Class Mail letter rates.
- (b) All changes considered but not implemented by the Postal Service after October 25, 2007, to the physical standards for DVD mailers entered at First-Class Mail letter rates.
- (c) All actions taken by the Postal Service after October 25, 2007, to implement Recommendations 2 and 3 of the OIG report.
- (d) All actions considered but not taken by the Postal Service after October 25, 2007, to implement Recommendations 2 and 3 of the OIG report.
- (e) Any changes in rates, fees, prices, classifications or mail preparation requirements for DVD mailers considered by the Postal Service after January 1, 2007.
- (f) Any changes considered by any level of the Postal Service after January 1, 2007, with respect to the processing of DVD mailers.
- (g) Any changes actually ordered by any level of the Postal Service after January 1, 2007, with respect to the processing of DVD mailers.
- (h) Any changes in the percentage of DVD mailer volume that received manual processing after the issuance of the OIG report.

- (i) Any changes in the breakage rate of DVDs after the issuance of the OIG report.
- (j) The SOP referred to in the last sentence on page 17 of the OIG report.
- (k) Any other actions actually taken by the Postal Service in response to the OIG report.
- (l) Any other actions considered but not taken by the Postal Service in response to the OIG report.

GFL/USPS-17. This question concerns the following statements by the Postal Service in this docket:

- (a) The second sentence of Paragraph 35 of the Postal Service's Answer, in which the Postal Service states that it "does not currently have a practice of manually culling out the DVD mailpieces of Netflix and Blockbuster; their mail is routinely processed in the automation letters mailstream."
- (b) The third sentence of Paragraph 35 of the Postal Service's Answer, in which the Postal Service states that "some manual culling of DVDs being returned from customers may occur in local mail processing by personnel at the AFCS; bypassing automated processing is motivated by an interest in getting all mail processed during the available window so as to meet service standards and would accordingly apply to a lot of mail that is otherwise capable of being processed on automated equipment."

- (c) Paragraph 36 of the Postal Service's Answer, in which the Postal Service states that the DVD processing practices described in the OIG report no longer reflect "current mail processing policy."
- (d) Paragraph 36 of the Postal Service's Answer, in which the Postal Service states that "DVD mailpieces for other mailers, such as the largest movie DVD providers, are typically processed in the automation letters mailstream."

For each quoted statement, please produce all data, studies, and analyses, memoranda, other written communications and other documents on which you rely. If the statement is based on any oral communications, please identify the maker of, witnesses to, and date and location of each communication.

GFL/USPS-18. This question refers to Paragraph 85 of the parties' July 20, 2009, Joint Statement of Undisputed and Disputed Facts. Paragraph 85 contains the following contention by GameFly: "[T]he manual culling of Netflix return DVD mailers at the point of induction, and their diversion to high-priority manual processing, have remained standard practice." The Postal Service disputes this statement. *Id.*

- (a) Please produce all data, studies and analyses of the percentage of Netflix return DVD mailer volume that has received manual culling in each fiscal year since 2005, and any part of the current year for which data are available.
- (b) Please produce all data, studies and analyses of the percentage of Netflix return DVD mailer volume that has received high-priority manual

processing in each fiscal year since 2005, and any part of the current year for which data are available.

GFL/USPS-19. This question concerns paragraph 16 of the Postal Service's Answer filed on May 26, 2009, which states in part that "Respondent also affirmatively alleges that such mailpieces are routinely processed in the automation letters mail stream."

- (a) Please confirm that the phrase "such mailpieces," as used by the Postal Service in paragraph 16 of its Answer, referred to DVDs in lightweight envelopes with a total mailpiece weight less than one ounce. If you fail to confirm without qualification, please explain fully.
- (b) Please define the phrase "routinely processed" in terms of a percentage of the total DVD volume entered at automation letter rates. If you are unable to supply a specific percentage, please provide the most precise range of percentages that you can provide.
- (c) Please produce all data, studies and analyses on which your answers to parts (a) and (b) rely.

GFL/USPS-20. Please produce all available data, studies and analyses concerning the following measures of the service provided by the Postal Service to DVD mailers:

- (a) The extent of manual culling and priority manual processing.
- (b) The extent of automated letter processing.

(c) The rate of DVD breakage.

(d) Any other dimension of the quality of mail service.

This request encompasses the service provided to any individual DVD rental company, any group of DVD rental companies, or the entire DVD rental industry. The time periods covered by this request are: (a) the period since November 2007; (b) any sub-period of the post-November 2007 period for which data are available; and (c) the last fiscal year before November 2007 for which data are available.

GFL/USPS-21. Please produce all Confirm scan data and other business records that relate to the extent to which DVD mail pieces to or from Netflix, Blockbuster, and other DVD rental companies have been processed on letter sorting equipment, flats sorting equipment, or manually.

GFL/USPS-22. Please produce all studies, analyses and similar documents created since January 1, 2007, that concern the relative importance of “getting all mail processed during the available window so as to meet service standards” (USPS Answer ¶ 35)—versus minimizing DVD breakage or complying with the requests of large DVD rental companies—as a cause of the manual processing of inbound letter-rated DVDs.

GFL/USPS-23. This question refers to the last sentence of the first complete paragraph on page 23 of the Postal Service’s Answer filed on May 26, 2009, which states that “Official policy is not to handle such inbound pieces [i.e., letter size DVD mailpieces] manually, although some of it is handled that way as previously explained.”

- (a) Please define the meaning of the qualifier “official” as it is used in the sentence.
- (b) Please produce all documents that establish an official policy “not to handle such inbound pieces manually.”
- (c) When did Postal Service headquarters first become aware that, notwithstanding the “official policy,” inbound letter-rated DVD mailers continue to be processed manually?
- (d) What steps, if any, has the Postal Service taken since then to bring actual operating practices in the field into compliance with the referenced “official policy”?
- (e) Please produce documents sufficient to verify your responses to parts (c) and (d).

GFL/USPS-24. This question refers to Paragraph 81 of the parties’ July 20, 2009, Joint Statement of Undisputed and Disputed Facts. Paragraph 81 contains the following contention by the Postal Service: “[M]ail processing decisions concerning the automated or manual handling of Netflix DVD return mail are made locally based on determinations as to what makes the best sense in the local mail processing environment, and processing decisions to remove Netflix mail from automated operations ensure the overall efficiency of mail processing operations, based on the characteristics of Netflix mail (such as the density of its volume).”

- (a) Please produce all documents issued by Postal Service headquarters officials (or other employees or groups with national authority) since January 2007 (or issued before that date but maintained in effect for any period since then) that authorize “mail processing decisions concerning the automated or manual handling of Netflix DVD return mail” to be “made locally.”
- (b) Please produce all documents issued by Postal Service headquarters officials (or other employees or groups with national authority) since January 2007 (or issued before that date but maintained in effect for any period since then) directing local, district or area officials to make “mail processing decisions concerning the automated or manual handling of Netflix DVD return mail” so as to “ensure the overall efficiency of mail processing operations, based on the characteristics of Netflix mail (such as the density of its volume).”
- (c) Has the Postal Service provided local, district or area officials with any standards, instructions or guidance to assist those officials in promoting the “overall efficiency of mail processing operations” when choosing between “automated” and “manual handling of Netflix DVD return mail”? If your answer is anything but an unqualified negative, please produce documentation of the standards, instructions and guidance.
- (d) Has the Postal Service performed any studies, analyses, surveys or other inquiries to determine since January 2007 whether the choices made by local, district or area officials between the “automated” and “manual

handling of Netflix DVD return mail” in fact are promoting the “overall efficiency of mail processing operations”? If your answer is anything but an unqualified negative, please produce all documentation of those studies, analyses, surveys and other inquiries, and the results thereby obtained.

GFL/USPS-25. This question refers to Paragraph 86 of the parties’ July 20, 2009, Joint Statement of Undisputed and Disputed Facts. Paragraph 86 contains the following contention by the Postal Service: “Headquarters policy is to allow local officials to determine whether to process Netflix DVD returns on processing equipment or manually.”

- (a) Please produce all directives, guidance, guidelines, handbooks, instructions, manuals, notices, rules, SOPs, standards and similar communications issued from Postal Service headquarters officials (or other employees or groups with national authority) to local, district or area officials since January 1, 2007 (or issued before that date but maintained in effect for any period since then) on the degree of discretion possessed by those local, district or area officials in “determin[ing] whether to process Netflix DVD returns on processing equipment or manually.”

- (b) Please produce all directives, guidance, guidelines, handbooks, instructions, manuals, notices, rules, SOPs, standards and similar communications issued from Postal Service headquarters officials (or other employees or groups with national authority) to local, district or area officials since January 1, 2007 (or issued before that date but maintained

in effect for any period since then) stating the criteria (if any) to be used by those local, district or area officials in “determin[ing] whether to process Netflix DVD returns on processing equipment or manually.”

- (c) Please produce all studies, reports or analyses issued by Postal Service headquarters officials (or other employees or groups with national authority) since January 1, 2007, concerning the extent to which local, district or area officials are in fact free to “determine whether to process Netflix DVD returns on processing equipment or manually.”

GFL/USPS-26. Please produce all directives, guidance, guidelines, handbooks, instructions, manuals, notices, rules, SOPs, standards and similar communications issued by Postal Service **Area** offices to District, local or other subordinate employees since January 1, 2007 (or issued before that date but maintained in effect for any period since then), concerning:

- (a) Whether (and under what criteria) Netflix DVD return mail should be processed on automated processing equipment vs. manually.
- (b) Whether (and under what criteria) Netflix DVD return mail should be culled or otherwise diverted from the automated mail stream.
- (c) Whether (and under what criteria) the DVD return mail of other DVD rental companies should be processed on automated processing equipment vs. manually.

- (d) Whether (and under what criteria) the DVD return mail of other DVD rental companies should be culled or otherwise diverted from the automated mail stream.

GFL/USPS-27. Please produce all directives, guidance, guidelines, handbooks, instructions, manuals, notices, rules, SOPs, standards and similar documents issued by Postal Service ***District*** offices to local or other subordinate employees since January 1, 2007 (or issued before that date but maintained in effect for any period since then), concerning:

- (a) Whether (and under what criteria) Netflix DVD return mailers should be processed on automated processing equipment vs. manually.
- (b) Whether (and under what criteria) Netflix DVD return mailers should be culled or otherwise diverted from the automated mail stream.
- (c) Whether (and under what criteria) the DVD return mailers of other DVD rental companies should be processed on automated processing equipment vs. manually.
- (d) Whether (and under what criteria) the DVD return mailers of other DVD rental companies should be culled or otherwise diverted from the automated mail stream.

GFL/USPS-28. What percentage of Postal Service retail facilities have mail slots designated for members of the public to deposit:

- (a) Netflix DVD mailers?

(b) Blockbuster DVD mailers?

(c) The DVD mailers of any DVD rental company?

GFL/USPS-29. Please produce copies of any signs, placards, posters and similar items that are used to direct or encourage members of the general public to deposit DVD reply mailers separately from other mail.

GFL/USPS-30. What percentage of Postal Service mail processing facilities have tubs or other containers that are used to hold:

(a) Netflix DVD mailers that have been culled from the automated mailstream?

(b) Blockbuster DVD mailers that have been culled from the automated mailstream?

(c) The DVD mailers of any DVD rental company that have been culled from the automated mailstream?

GFL/USPS-31. Please produce copies of any signs, placards, posters and similar items that are used to inform Postal Service mail processing personnel where to place DVD reply mailers that have been manually culled from the automation mailstream.

GFL/USPS-32. Please produce all directives, guidance, guidelines, handbooks, instructions, manuals, notices, rules, SOPs, standards and similar

communications issued by the Postal Service that limit the access of Netflix personnel to USPS personnel or facilities.

GFL/USPS-33. Please produce all directives, guidance, guidelines, handbooks, instructions, manuals, notices, rules, SOPs, standards and similar communications issued by the Postal Service that limit the access of Blockbuster personnel to USPS personnel or facilities.

GFL/USPS-34. Please produce all directives, guidance, guidelines, handbooks, instructions, manuals, notices, rules, SOPs, standards and similar communications issued by the Postal Service to limit the access of GameFly to USPS personnel or facilities after the filing of GameFly's complaint in this case.

**Miscellaneous Documents Concerning
The Service Provided To DVD Mailers**

GFL/USPS-35. Please produce copies of all studies of DVD mail or DVD mailers performed by Christensen Associates or any other consultant or contractor for the Postal Service since January 1, 2005. For each study produced, please also produce its workpapers and supporting documentation.

GFL/USPS-36. Please produce a copy of the study entitled *United States Postal Service (USPS) Mail Characteristics of DVD-by-Mail.*, as well as all workpapers, communications and other documents that relate to the study. (This study is cited in OIG Audit Report No. MS-AR-08-001, *Review of Postal Service First-Class Permit Reply Mail* (November 8, 2007).)

GFL/USPS-37. The Postal Service's 2007 Update to the Strategic Transformation Plan stated: "The Postal Service is also exploring a round-trip product designed for other mail applications. The principal market for this product consists of mailers sending disc-based media rentals, such as movies, audio books, and computer games. Customers will benefit from easy payment options, and the Postal Service will benefit from lower handling and accounting costs for the incoming return pieces."

- (a) Please describe the terms of the potential "round-trip product" to which the quoted statement referred.
- (b) Please produce all studies, reports, analyses and similar documents created since January 1, 2005, concerning the "round-trip product."
- (c) Please explain why the Postal Service decided not to adopt the product.
- (d) Please produce documents sufficient to verify your response to part (c).

GFL/USPS-38. Please produce all presentations to the Executive Committee of the Postal Service since January 1, 2005, concerning possible changes in rates or classifications for DVD mailers. Please also produce all workpapers and supporting documentation for each such presentation.

GFL/USPS-39. Please produce copies of all documents produced by the Postal Service since January 1, 2005, in response to any request under the Freedom of Information Act for any information relating to:

- (a) The processing or handling of DVD mail.

- (b) The automation compatibility of DVD mailers.
- (c) The machinability of DVD mailers.
- (d) DVD breakage.
- (e) Rates, fees, prices, classifications or preparation requirements for DVD mail.
- (f) Customer-specific rate or service arrangements between the Postal Service and any DVD rental company.

GFL/USPS-40. Please produce all written communications between the Postal Service and any third party (other than a DVD rental company) since January 1, 2007, concerning:

- (a) The rates, fees, prices, classifications, mail preparation requirements, or processing standards established by the Postal Service for DVD mailers generally, or the DVD mailers of any particular DVD rental company.
- (b) The processing and other treatment actually given by the Postal Service to DVD mailers.
- (c) The Postal Service's actual performance in processing and delivering DVD mailers.
- (d) DVD breakage or loss.
- (e) The OIG report, and the OIG investigation that preceded it.

- (f) Changes (if any) in the Postal Service's preparation requirements for and handling of DVD mail after the issuance of the OIG report.
- (g) Possible changes in rates, fees, mail preparation requirements, or processing procedures for DVD mail.

DVD Breakage and Its Causes

GFL/USPS-41. Please produce all studies, analyses, reports, internal reviews, memoranda, and similar documents created since January 1, 2005, by the Postal Service, any subordinate department or division of the Postal Service with national responsibilities (e.g., engineering, operations, marketing, pricing, Postal Inspection Service or Office of Inspector General), or any contractor or consultant to the Postal Service, relating to any of the following subjects:

- (a) DVD breakage.
- (b) The cause(s) of DVD breakage.
- (c) The actual rate of DVD breakage (for Netflix, any other DVD rental company, any group of DVD rental companies, or the DVD rental industry generally).
- (d) Trends in DVD breakage rates over time.
- (e) Possible methods of reducing or eliminating DVD breakage.

GFL/USPS-42. This question refers to Paragraph 28 of the parties' July 20, 2009, Joint Statement of Undisputed and Disputed Facts. Paragraph 28 contains the

following GameFly statement, which the Postal Service declined to join: “[T]he rate of breakage of DVDs in lightweight mailers, when processed on Postal Service automated letter process[ing] equipment, is substantial, and can be as high as five percent per return trip.”

- (a) What is the current rate of breakage of DVDs in lightweight mailers, when processed on Postal Service automated letter processing equipment?
- (b) What is the current rate of breakage of return mailings of DVDs in lightweight mailers, when processed in Postal Service automated letter processing equipment?
- (c) Please produce all data, studies and analyses supporting your response to parts (a) and (b).

GFL/USPS-43. This question concerns the last sentence of paragraph 16 of the Postal Service’s Answer filed on May 26, 2009. In that paragraph, the Postal Service denied that “postal acceptance, processing and/or delivery is the proximate cause of all, a majority of, or a significant portion of overall DVD damage.” Paragraph 16 of the Postal Service’s Answer also suggested that DVD damage is (or may be) caused by other factors such as the brittleness or rigidity of the DVD, the design of the “mailing envelopes and/or insufficiently protective inserts; the degree of care (or lack thereof) exercised by Complainant’s customers in handling or using DVDs obtained via the mail; or by Complainant’s employees processing DVDs, preparing outgoing mailpieces or opening return mailpieces.” Please produce all data, studies and analyses created since January 1, 2005, concerning:

- (a) The relative significance of each factor listed in paragraph 16 of the Postal Service's Answer as a cause of damage to DVDs.
- (b) The relative "brittleness" of GameFly's DVDs versus the DVDs of Netflix, Blockbuster and other DVD rental companies that are customers of the Postal Service.
- (c) The relative "rigidity" of GameFly's DVDs versus the DVDs of Netflix, Blockbuster and other DVD rental companies that are customers of the Postal Service.
- (d) The degree of protection afforded by GameFly's mailing envelopes and protective inserts versus the envelopes and inserts used by Netflix, Blockbuster and other DVD rental companies that are customers of the Postal Service.
- (e) The degree of care (or lack thereof) exercised by GameFly's customers in handling or using DVDs obtained via the mail, versus the degree of care exercised by the customers of Netflix, Blockbuster and other DVD rental companies that are customers of the Postal Service.
- (f) The degree of care (or lack thereof) exercised by GameFly's employees in processing DVDs, preparing outgoing mailpieces or opening return mailpieces, versus the degree of care exercised by the employees of Netflix, Blockbuster and other DVD rental companies that are customers of the Postal Service.

GFL/USPS-44. This question concerns paragraph 32 of the parties' July 20, 2009, Joint Statement of Undisputed and Disputed Facts. In paragraph 32, the Postal Service contends that "some amount of the DVD breakage experienced by GameFly is due to mishandling by GameFly employees."

- (a) Please produce all data, studies and analyses that support this contention.
- (b) Please produce all other data, studies and analyses concerning the significance of the mishandling of DVDs by the employees of any DVD rental company as a cause of DVD breakage.
- (c) Please produce all other data, studies and analyses concerning the significance of the mishandling of DVDs by the employees of the DVD rental industry generally as a cause of DVD breakage.

(This question seeks responsive information created since January 1, 2005.)

GFL/USPS-45. This question concerns paragraph 33 of the parties' July 20, 2009, Joint Statement of Undisputed and Disputed Facts." In paragraph 33, the Postal Service contends that: "(a) DVDs may have different characteristics (e.g., DVDs vary in their thickness); (b) a DVD containing a video game is generally thicker than a DVD containing a movie, which is thicker than a blank DVD sold to consumers; and (c) thicker DVDs are less flexible and heavier." Please produce all data, studies and analyses that that you rely on in support of the quoted contentions.

GFL/USPS-46. This question concerns footnote 2 on page 2 of the Postal Service's May 26 Answer to the Complaint, which asserts that movie DVDs tend to be "thinner discs" than game DVDs.

- (a) On what is the assertion based?
- (b) What is the industry standard specification for the thickness of movie DVDs?
- (c) What is the industry standard specification for the thickness of game DVDs?
- (d) What is the industry standard specification for the thickness of Blu-ray discs?
- (e) Please produce (or cite, if publicly available) all authorities on which you rely in support of your answers to parts (a) through (d).

GFL/USPS-47. Does the Postal Service contend that game DVDs are, on average, more fragile or brittle than movie DVDs? Unless your answer is an unqualified negative, please produce all data, studies, analyses and other documents on which you rely.

GFL/USPS-48. This question refers to Paragraph 35 of the parties' July 20, 2009, Joint Statement of Undisputed and Disputed Facts." Paragraph 35 contains the following contention by the Postal Service: "the occurrence of DVD breakage can depend on the number of 'rental cycles' an individual DVD has experienced (i.e., the number of times the DVD has been entered by a DVD mailer into the mail stream,

processed on the outbound leg, delivered, handled by the DVD mailer's customer, mailed by the customer, and processed on the return leg).”

- (a) Please produce all data, studies, analyses and other documents on which you rely in support of the quoted contention.
- (b) The quoted statement identifies several components of the DVD “rental cycle.” Does the Postal Service contend that any component of the DVD rental cycle other than automated letter processing on the return leg plays a significant role in weakening the resistance of a DVD to breakage during future rental cycles?
- (c) If your response to part (b) is anything but an unqualified no, please produce all data, studies, analyses and other documents on which you rely.

GFL/USPS-49. This question refers to Paragraph 37 of the parties’ July 20, 2009, Joint Statement of Undisputed and Disputed Facts.” Paragraph 37 contains the following GameFly statement, which the Postal Service declined to join: “GameFly contends that the avoidance of automated letter processing of DVD return mailers by the Postal Service—with no change in the physical attributes of the DVD, its handling by the employees and customers of the DVD rental company, and the average number of mailing cycles per DVD—can reduce the average DVD breakage rate from approximately five percent per return trip to less than one percent per return trip.”

- (a) Please identify each element of the quoted statement with which the Postal Service is unwilling to agree.

- (b) For each such element, please explain why the Postal Service is unwilling to agree with it.
- (c) If the reasons stated in part (b) are based in whole or part on documents, please produce them.
- (d) If the reasons stated in part (b) are based in whole or part on communications from Postal Service employees, please provide the name of each such employee; his or her job title, department or group, and work location at the time of the communication(s); and the substance of the communication.

GFL/USPS-50. Please produce all data, studies or analyses created since January 1, 2005, concerning the effect on DVD breakage rates from bypassing the automated letter processing of DVD return mailers by the Postal Service.

Alternative Mailer Designs

GFL/USPS-51. This question refers to Paragraph 40 of the parties' July 20, 2009, Joint Statement of Undisputed and Disputed Facts. Paragraph 40 contains the following GameFly statement, which the Postal Service declined to join: "none of these means [alternative mailer designs tested by GameFly and the Postal Service] has achieved an acceptable rate of breakage at an acceptable cost."

- (a) Please identify each reason for the Postal Service's unwillingness to stipulate to the quoted statement.

- (b) Please produce all data, studies and analyses that you contend support each reason identified in part (a).

- (c) For each alternative DVD mailer design that the Postal Service has tested since January 1, 2002, whether or not for or with a particular customer, please provide the physical specifications of the mailer design and all documents relating to the test results.

GFL/USPS-52. Given the breakage rate of Netflix DVDs in reply mailers for which Netflix pays letter rates of postage, what breakage rate should other DVD rental companies be required to accept from the USPS for DVD reply mailers mailed at letter rates of postage?

GFL/USPS-53. What is the maximum rate of postage that other DVD rental companies should accept paying to obtain the same breakage rate for DVD reply mailers that Netflix obtains by paying letter rates of postage?

GFL/USPS-54. This question refers to Paragraph 46 of the parties' July 20, 2009, Joint Statement of Undisputed and Disputed Facts. Paragraph 46 contains the following GameFly statement, which the Postal Service declined to join: "[S]imply paying the rates for flat-shaped First-Class Mail (with flats paying more postage than similar weight letters since implementation of the rates established in Docket No. R2006-1), and marking the mailers with warnings such as 'FIRST-CLASS MAIL FLAT' and 'PROCESS ON AFSM-100' were insufficient to avoid a high rate of breakage."

- (a) Please identify each reason for the Postal Service's unwillingness to stipulate to the quoted statement.

- (b) Please provide all data, studies and analyses that you contend support each reason identified in part (a).
- (c) Do you contend that “simply paying the rates for flat-shaped First-Class Mail (with flats paying more postage than similar weight letters since implementation of the rates established in Docket No. R2006-1), and marking the mailers with warnings such as ‘FIRST-CLASS MAIL FLAT’ and ‘PROCESS ON AFSM-100’”—but not including a protective insert in the mailer that is thick enough to cause its diversion from automated letter processing equipment—are sufficient to avoid a high rate of breakage?
- (d) If your answer to part (c) is anything but an unqualified negative, please provide all data, studies and analyses on which you rely.

GFL/USPS-55. This question refers to Paragraph 47 of the parties’ July 20, 2009, Joint Statement of Undisputed and Disputed Facts. Paragraph 47 contains the following GameFly statement, which the Postal Service declined to join: “[I]ncreasing the height of the mailer to eight inches, without a cardboard protective insert, did not reduce the breakage rate to acceptable levels.”

- (a) Please identify each reason for the Postal Service’s unwillingness to stipulate to the quoted statement.
- (b) Please provide all data, studies and analyses that you contend support each reason identified in part (a).

- (c) Do you contend that increasing the height of a DVD mailer to eight inches, without a cardboard protective insert, is a reliable means for postal customers other than Netflix to reduce the breakage rate of DVDs in return mailings to acceptable levels ?
- (d) If your answer to part (c) is anything but an unqualified negative, please provide all data, studies and analyses on which you rely.
- (e) Please produce all other data, studies and analyses created since January 1, 2005, concerning the breakage rate of eight-inch DVD mailers without a protective insert.

GFL/USPS-56. This question refers to Paragraph 51 of the parties' July 20, 2009, Joint Statement of Undisputed and Disputed Facts. Paragraph 51 contains the following GameFly statement, which the Postal Service declined to join: "[A] DVD mailpiece at least 8.5" in height with sufficient stiffness not to fold over would exceed one ounce in weight, and thus would require the payment of postage for a two-ounce First-Class flat."

- (a) Please identify each reason for the Postal Service's unwillingness to stipulate to the quoted statement.
- (b) Please provide all data, studies and analyses that you contend support each reason identified in part (a).

GFL/USPS-57. This question refers to Paragraph 54 of the parties' July 20, 2009, Joint Statement of Undisputed and Disputed Facts. Paragraph 54 contains the

following GameFly statement, which the Postal Service declined to join: “[T]he production of a DVD mailer 8.5” or more tall would be difficult or infeasible.”

- (a) Please identify each reason for the Postal Service’s unwillingness to stipulate to the quoted statement.
- (b) Please provide all data, studies and analyses that you contend support each reason identified in part (a).
- (c) Please produce any other data, studies or analyses created since January 1, 2005, concerning the feasibility of producing a DVD mailer 8.5” or more tall.
- (d) For each DVD mailer currently on the market that is 8.5” or more tall, please identify the manufacturer, model number, physical specifications and price of the mailer.

Service Requested By GameFly

GFL/USPS-58. This question refers to Paragraph 26 of the parties’ July 20, 2009, Joint Statement of Undisputed and Disputed Facts. Paragraph 26 contains the following GameFly statement, which the Postal Service declined to join: “video game DVDs in lightweight mailers can also be mailed as one-ounce letters.”

- (a) Please identify each element of the quoted statement with which the Postal Service is unwilling to agree.

- (b) For each such element, please explain why the Postal Service is unwilling to agree with it.
- (c) If the reasons stated in part (b) are based in whole or part on documents, please produce them.
- (d) If the reasons stated in part (b) are based in whole or part on communications from Postal Service employees, please provide the name of each such employee; his or her job title, department or group, and work location at the time of the communication(s); and the substance of the communication.

GFL/USPS-59. This question refers to Paragraph 43 of the parties' July 20, 2009, Joint Statement of Undisputed and Disputed Facts. Paragraph 43 contains the following contention by the Postal Service: "[A]utomated flats processing has been important to GameFly because of its desire to receive Confirm scans."

- (a) Does the Postal Service contend that the opportunity to receive Confirm scans is more important to GameFly than the opportunity to receive Netflix-level rates of DVD breakage at Netflix rates of postage?
- (b) If your answer to part (a) is anything other than an unqualified negative, produce all documents on which you rely and provide a written description (including the identity of the speaker and witnesses and the date of the communication) of each oral communication on which you rely.

GFL/USPS-60. This question refers to Paragraph 44 of the parties' July 20, 2009, Joint Statement of Undisputed and Disputed Facts. Paragraph 44 contains the following contention by the Postal Service: "GameFly has in the past requested automated flats processing in lieu of other types of processing, including manual processing."

- (a) Prior to the requests referred to in Paragraph 44 of the Joint Statement, had the Postal Service ever communicated to GameFly that it had the alternative of entering its DVDs in lightweight mailers like those of Netflix, at the rates of postage charged for machinable letters, while receiving the same degree of manual culling and priority manual processing—and the same rates of DVD breakage—that the Postal Service currently offers to Netflix?
- (b) If your answer to part (a) is anything other than an unqualified negative, produce all documents on which you rely and provide a written description (including the identity of the speaker and witnesses and the date of the communication) of each oral communication on which you rely.

GFL/USPS-61. This question refers to Paragraph 124 of the parties' July 20, 2009, Joint Statement of Undisputed and Disputed Facts. Paragraph 124 contains the following contention by the Postal Service: "GameFly specifically requested AFSM 100 processing in preference to manual processing, and . . . GameFly's stated reasons for preferring AFSM 100 processing were to enable GameFly to receive Confirm scans, reduce the amount of breakage, and reduce the amount of theft."

- (a) Prior to the requests referred to in Paragraph 124 of the Joint Statement, had the Postal Service ever communicated to GameFly that it had the alternative of entering its DVDs in lightweight mailers like those of Netflix, at the rates of postage charged for machinable letters, while receiving the same degree of manual culling and priority manual processing—and the same rates of DVD breakage—that the Postal Service currently offers to Netflix?
- (b) If your answer to part (a) is anything other than an unqualified negative, produce all documents on which you rely and provide a written description (including the identity of the speaker and witnesses and the date of the communication) of each oral communication on which you rely.

GFL/USPS-62. This question refers to Paragraph 125 of the parties' July 20, 2009, Joint Statement of Undisputed and Disputed Facts. Paragraph 125 contains the following GameFly contentions, which the Postal Service declined to join: "GameFly . . . requested AFSM 100 processing because the Postal Service had not offered GameFly manual culling and high priority manual processing of DVD return mailers entered at letter rates. GameFly further contends that it would accept culling and manual processing of DVD return mailers entered at letter rates on terms comparable to those currently offered to Netflix, in preference to AFSM 100 automated processing, if given the option."

- (a) Please identify each element of the quoted statements with which the Postal Service is unwilling to agree.

- (b) For each such element, please explain why the Postal Service is unwilling to agree with it.
- (c) If the reasons stated in part (b) are based in whole or part on documents, please produce them.
- (d) If the reasons stated in part (b) are based in whole or part on oral communications from Postal Service employees, please provide the name of each such employee; his or her job title, department or group, and work location at the time of the communication(s); and the substance of the communication.
- (e) If the reasons stated in part (b) are based in whole or part on oral communications from representatives of GameFly, please state the date and time of the communication, the name of each GameFly representative, the name of each Postal Service employee who allegedly heard the communication (if oral), the substance of the communication (if oral), and a copy of the communication (if written).

GFL/USPS-63. This question refers to Paragraph 132 of the parties' July 20, 2009, Joint Statement of Undisputed and Disputed Facts. Paragraph 132 contains the following undisputed statement of fact: "GameFly asks in this proceeding that the Commission order the Postal Service to offer GameFly's DVD mailers processing on terms and conditions substantially identical to those offered to Netflix." If GameFly were to begin entering its DVDs in lightweight mailers like those of Netflix, at the rates of postage charged for one-ounce machinable letters, would the Postal Service offer to

GameFly the same degree of manual culling and priority manual processing that the Postal Service currently provides to Netflix?

GFL/USPS-64. This question refers to Paragraph 55 of the parties' July 20, 2009, Joint Statement of Undisputed and Disputed Facts. Paragraph 55 contains the following contentions by the Postal Service: "(a) the mailer currently being used by GameFly is configured such that the placement of the DVD on the return trip leaves a floppy portion at the bottom of the mail piece; (b); this floppy portion can fold up during processing; (c); this can hinder processing; and (d) the GameFly mail piece is a 'fletter,' in that Postal Service mail processing personnel may view it as having the characteristics of a letter." Please produce all studies, analyses and other documents on which you rely in support of these contentions.

GFL/USPS-65. This question refers to Paragraph 109 of the parties' July 20, 2009, Joint Statement of Undisputed and Disputed Facts. Paragraph 109 contains the following GameFly statement, which the Postal Service declined to join: "[A]utomated processing of DVD reply mailers to obtain piece counts for assessing postage can be performed in a manner that produces lower breakage rates than does normal automated letter sorting."

- (a) Please identify each element of the quoted statement with which the Postal Service is unwilling to agree.
- (b) For each such element, please explain why the Postal Service is unwilling to agree with it.

- (c) If the reasons stated in part (b) are based in whole or part on documents, please produce them.

- (d) If the reasons stated in part (b) are based in whole or part on communications from Postal Service employees, please provide the name of each such employee; his or her job title, department or group, and work location at the time of the communication(s); and the substance of the communication.