

USPS-T-1

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

COMPLAINT OF GAMEFLY, INC.

Docket No. C2009-1

**DIRECT TESTIMONY OF
NICHOLAS F. BARRANCA
ON BEHALF OF THE
UNITED STATES POSTAL SERVICE**

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AUTOBIOGRAPHICAL SKETCH

My name is Nicholas F. Barranca. Currently, I serve as Advisor to the Senior Vice President, Operations. Prior to that, I served as the Senior Advisor and Chief of Staff, Office of the Postmaster General.

I have 37 years of postal service. I joined the Postal Service in September of 1973 as a management associate in the Baltimore, Maryland, Post Office. Since then, I have held numerous positions of increasing responsibility in Operations and Marketing. In the early years, I was Foreman of Mails, General Foreman of Mails, Foreman of Delivery and Station Manager, and member of the Control and Logistics Department at the Pittsburgh Bulk Mail Center. In these capacities and others, I have had considerable experience in line operations, as well as management of processing and delivery operations.

My most recent executive positions have included Vice President, Operations Planning and Processing; Vice President, Operations Support, Manager Operations Analysis; Manager, In-Plant Operations; Director, Office of Delivery and Customer Service; and Director, Automation Integration, all at Postal Service Headquarters.

In Marketing, as Vice President, Product Development, I helped modernize Postal Service product and service offerings, better matching them with customer needs and expectations, working to ensure product features aligned with operational capabilities.

I was a witness for the Postal Service in Docket No. MC83-2 (ZIP + 4), one of the Postal Service' first efforts to integrate automation technology into the pricing structure.

I hold a Bachelor of Science degree in Business Administration, and a Master of Science degree in Business Administration, both from the University of Maryland at College Park.

PURPOSE OF TESTIMONY

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The purpose of this testimony is to address several issues raised by GameFly, Inc.'s, Complaint against the Postal Service. GameFly has alleged that the Postal Service engages in undue or unreasonable discrimination against GameFly, and in favor of Netflix, Inc. and Blockbuster. I will explain the Postal Service' defense against these allegations, and place them in context from the perspectives of postal operations, the Postal Service' business, and the Postal Service' policy objectives for its customers and the public. In the following discussion, I will rely substantially on the testimony of Postal Service witnesses Belair (USPS-T-2), Seanor (USPS-T-3), and Lundahl (USPS-T-4).

I will address the following topics: (1) GameFly's implication that the Postal Service' alleged preference in favor of Netflix and Blockbuster is an outgrowth of its favoritism toward large, influential mailers and against smaller, less influential mailers; (2) GameFly's contention that it is similarly situated to Netflix and Blockbuster; (3) GameFly's allegation that Netflix has been given unusual and unwarranted access to postal management decisions in the processing of mail containing DVDs; (4) GameFly's contention that the Postal Service' operations policy of deferring to local management decisions in processing DVD mail is undue or unreasonable; (5) GameFly's contention that local management decisions in this regard are discriminatory against GameFly; (6) GameFly's reliance on internal communications within the Postal Service to support its complaint; (7) GameFly's allegations that the Postal Service affords other preferences to Netflix that, together with its mail processing decisions, establish a pattern of undue or unreasonable discrimination and preference; (8) GameFly's position that the Postal

1 Service' operations policy and decisions constitute a denial to it of treatment similar to
2 that afforded to Netflix and Blockbuster, as well as an explicit refusal to give such
3 treatment to GameFly; (9) the Postal Service' conditional representation that it would
4 process GameFly's mail in the same manner as Netflix under the same rates that Netflix
5 pays; and (10) implications of the future mail processing environment for GameFly's
6 claims.

7

8 **I. GameFly's Complaint seeks lower rates.**

9 GameFly is seeking lower rates for mailing DVDs. Its Complaint asks for prices
10 equal to those paid by Netflix for the same type and level of mail processing given to
11 Netflix and Blockbuster. Complaint of GameFly, Inc., at ¶ 57 (April 23,
12 2009)("Complaint"). Its only filed testimony is designed to demonstrate that the postage
13 it currently pays for outgoing and return DVD mail exceeds the rates paid by Netflix by
14 \$1.30. Testimony of Sander Glick (GFL-T-1). In this regard, GameFly has chosen to
15 mail its DVDs as First-Class Mail flats. Netflix, on the other hand, pays First-Class Mail
16 automation letter rates for its outbound DVDs, and First-Class Mail single-piece letter
17 rates for its returning DVDs. In addition, as a consequence of inserting reinforcing
18 material in its mailpieces, the weight of GameFly's mailpieces exceeds one ounce, so
19 GameFly pays the two-ounce flat rate. For its part, GameFly has never mailed at the
20 letter rate, choosing the added protection and, in its view, more security afforded by
21 packaging and processing its DVDs as flats, rather than letters.

22 GameFly filed its Complaint after the Postal Service failed to respond favorably to
23 GameFly's ultimatum contained in a letter from its counsel to the Postal Service'

1 General Counsel. This letter demanded that the Postal Service give it a “concrete
2 proposal” to process GameFly DVDs on the same terms and conditions as Netflix and,
3 Blockbuster, or else it would file a complaint alleging discrimination. Memorandum of
4 GameFly, Inc., Summarizing Documentary Evidence, at ¶¶ 107-11 (“Memorandum”).
5 The ultimatum followed earlier discussions with the Postal Service, during which
6 GameFly attempted to persuade it to create a reduced rate for round-trip DVDs, or a
7 separate classification that would circumvent the two-ounce flat rate. GameFly also
8 sought to persuade the Postal Service to waive the additional ounce rate for GameFly
9 pieces. *Id* at ¶ 100. GameFly describes its choice of paying flats rates as a “costly
10 workaround of paying extra for its DVD mailers to be processed as flats.” *Id.* at ¶¶ 4,
11 102.

12 The essence and foundation of GameFly’s Complaint can be summarized as
13 follows. GameFly accuses the Postal Service of maintaining a “caste system” among its
14 customers who mail DVDs. *Id* at ¶ 3. It strongly implies that this system results from
15 the tendency for the Postal Service to favor large, influential mailers at the expense of
16 smaller mailers, at least in the DVD industry. According to GameFly, this preferential
17 treatment arises from the tendency for DVDs mailed as First-Class Mail letters to be
18 damaged in the Postal Service’ processing equipment. According to GameFly, Netflix
19 and Blockbuster do not have to face this potential for damage, because, as a result of
20 their influence, the Postal Service has agreed to process their mail manually, rather
21 than with machines. In GameFly’s view, this processing follows from the Postal Service’
22 operations policy of deferring to local management to decide how to process return
23 DVD mail. GameFly alleges that, because of its smaller and less influential status, local

1 decision-making would not result in processing its mail similarly to allow GameFly
2 thereby avoiding damage to the same degree. In its view, GameFly is therefore forced
3 to pay a higher rate for different processing as flats. GameFly further alleges that the
4 Postal Service has no rational justification for making a distinction between Netflix and
5 Blockbuster, on one hand, and GameFly, on the other. GameFly believes that this
6 situation constitutes undue or unreasonable discrimination and preference under the
7 law.

8

9 **II. The Postal Service does not favor large versus small mailers in an**
10 **irrational or undue way.**

11

12 **A. Large versus Small**

13

14 The emotional thrust of GameFly's allegations appears to rely substantially on
15 popular notions that, in commercial business, large customers have more clout than
16 smaller customers. In this regard, any business is likely to listen acutely to the views of
17 its customers that bring it relatively more business, and consequent revenues. It is also
18 likely to appreciate the practical differences that higher volume customers might be able
19 to bring to the businesses' working relationships. This phenomenon and attitude could
20 be more prominent in a service industry, like mailing and shipping, where cooperation
21 and greater efficiency of operations arise out of greater and more frequent interaction
22 between customers and the service provider, and from more intensive efforts by the
23 large customers to do things that make the service relationship work more smoothly.

24 From a historical perspective, business dealings with larger customers have
25 evolved over time from the unique postures they represent in their relationships with the
26 Postal Service. For example, the account management structure assigns different

1 levels of representation based on size. A Strategic Account Manager is responsible for
2 Premier accounts, and a Business Mail Entry Unit employee is responsible for the
3 smaller, local accounts. It should be noted, however, that all customers have access to
4 postal channels. The specific channels they access can vary, based on their
5 characteristics, such as revenue, volume, geographic spread of their mailings, and the
6 type of product mailed, among other things.

7 While different treatment for large versus small mailers is a logical outgrowth of a
8 complex service business like the Postal Service, postal operations are driven by
9 concrete, practical circumstances, not by general notions of favoritism. There are
10 many objective respects in which large mailers might appear to warrant different, and
11 even more “favorable”, treatment than small mailers. This circumstance, furthermore, is
12 not restricted to First-Class Mail, but has long been an influence in Periodicals,
13 advertising mail, and shipping, as well as other parts of the mail business. At the local
14 level, where most operations decisions are made, however, the importance of size on
15 the service relationship diminishes, and local postmasters and managers tend to forge
16 strong bonds of service commitment, and close, active working partnerships, with
17 mailers of all types and sizes, including the most important individual citizen.

18 By the same token, furthermore, it often occurs that small mailers benefit from
19 their size, as well. A customer who is small on the national or regional scale may
20 nonetheless be a major mailer or recipient in local mail processing operations.
21 Customers, such as presort service bureaus, can have a large impact on the plants
22 where they deposit their mailings, and may be afforded preferred entry times based on
23 the type of mail they produce, while not having a national impact. Other examples may

1 be a college or university, local newspapers and other local retailers who use the mail to
2 reach their customers. Customers may also increase their visibility among postal
3 employees based on how they enter mail, take delivery, or the mix of products and
4 services used. GameFly, for example, enters substantial Express Mail volume as open
5 and distribute parcels that speed delivery to eventual addressees. While that volume
6 may not seem substantial in a national or regional picture, it assuredly is substantial for
7 the originating offices.

8 GameFly differs from Netflix on several levels: Netflix is a local mailer in 58
9 locations compared to GameFly's four. Netflix takes delivery from approximately 130
10 locations—many of these entailing multiple pickups per day—while GameFly takes
11 delivery from only four. Netflix' volume constitutes a major portion of collection mail in
12 thousands of locations, with its density in the mailstream increasing as it approaches
13 delivery points. GameFly's pieces are difficult to find in the mailstream (Netflix uses
14 color and shape to stand out while GameFly does not), and its mail attains a high
15 proportion of mail flow in only a few locations, as mail approaches the four GameFly
16 destination points. Netflix pieces are in the mailstream only briefly, usually encountering
17 only one plant en route to destination, while GameFly pieces (especially from certain
18 locations) need to be processed repeatedly in flat sorting operations.

19 To a large extent, there are more dimensions to the size issue than suggested by
20 GameFly's prejudicial description, which implies that the Postal Service is inordinately
21 influenced by the asset value and political or other clout wielded by large, successful
22 businesses. In my experience, the Postal Service approaches its relationships with all
23 of its customers in an objective and fair way that pays respect to the full array of Postal

1 Service objectives in providing postal services to the nation. Furthermore, the Postal
2 Service is acutely aware of its status and role as an important public service, and it
3 believes that it has an important obligation to be impartial in all of its activities and its
4 relations with customers and the public.

5 During my time as Vice President of Product Development, we initiated several
6 service offerings that were available to mailers of all sizes who already qualified to mail
7 at discounted rates. Both Customized Market Mail, a Standard mail product, and
8 Repositionable Notes were made available to any mailer who chose to use them. Size
9 and volume requirements were not added, and these products had to meet existing
10 requirements for mailings that mailers of any size could prepare. As another example
11 where size has not prescribed relations with the Postal Service, there have been plans
12 to revise the mailing standards for folded self-mailers claiming automation letter rates,
13 based on problems uncovered with some designs. The Postal Service completed
14 testing of hundreds of pieces of varying designs. Working through MTAC and other
15 associations, all sizes of mailer were afforded the opportunity to have designs tested.

16 **B. GameFly versus Netflix and Blockbuster**

17 GameFly's allegations of discrimination depend in large part on its comparison
18 with Netflix and Blockbuster. As I understand GameFly's argument, its assertion that it
19 is similarly situated to these firms rests principally on their common status as DVD
20 rental companies. Both GameFly and Netflix have similar business models, renting
21 DVDs to subscribers, who receive them and send them back through the mail.
22 GameFly also relies on what it describes as a "common industry problem," namely, that

1 DVDs are susceptible to breakage from automated processing as letters in the
2 mailstream.

3 From there, the comparison tends to break down, and GameFly relies more on
4 alleged differences between itself and Netflix and Blockbuster than similarities.
5 Foremost in its message, GameFly emphasizes that Netflix and Blockbuster are much
6 larger, more influential customers than GameFly, which, with smaller volumes and fewer
7 collection points, is not in a position to exercise much influence over the Postal Service,
8 particularly over mail processing decisions at the local level. In this respect, the picture
9 GameFly draws is one of a large, influential customer, Netflix, who is able to induce
10 preferential treatment from the Postal Service through extraordinary efforts at the local
11 level, where it is given unwarranted access to postal managers and is able to persuade
12 them to give favored treatment. GameFly strongly implies that this favored status is
13 endorsed and promoted at the highest levels of the Postal Service' organization, so as
14 to amount to a *de facto* directive or SOP from the national level to ensure that most
15 Netflix and Blockbuster DVDs on the return trip are culled from the mailstream and
16 processed manually. GameFly contends that this processing treatment lacks
17 reasonable justification.

18 The problem I see in that analysis, however, is that it is precisely the size and
19 volume of DVD's in the mail, the physical characteristics of the volume, the operating
20 environment, and the service commitment associated with First-Class Mail, as well as
21 the cooperative efforts engaged in by Netflix and Blockbuster throughout the postal
22 system, that give rise to the operations distinctions about which GameFly complains.
23 The mix of these elements at the local level, furthermore, support rather than undermine

1 the justifications for treating Netflix and Blockbuster differently. Viewed in this context,
2 GameFly's simplistic comparison and its conclusions invoking anti-discrimination as a
3 reason for holding the Postal Service liable fall under the weight of those very
4 comparisons.

5 Before I reach that conclusion, however, I must note a critical difference between
6 GameFly, on one hand, and Netflix and Blockbuster, on the other. GameFly does not
7 even attempt to mail at the same rate and classification as Netflix. Rather, GameFly
8 chooses to enter its DVDs and receive them in return traffic as First-Class Mail flats. By
9 placing protective material in the flats pieces, furthermore, GameFly increases the
10 weight of the pieces beyond one ounce, so that it must pay the more expensive second-
11 ounce flat rate. In flats processing, moreover, GameFly has taken special efforts to
12 ensure that its DVDs are not processed manually, but rather are processed on flats
13 automation equipment. GameFly has worked with the Postal Service to ensure that
14 result, because, in its estimation, such processing best meets its objectives of
15 minimizing breakage and avoiding theft and loss.

16 In contrast, Netflix and Blockbuster mail at First-Class Mail letter rates. The
17 record reflects that GameFly has never mailed its DVDs as letters. Under this general
18 classification, Netflix and Blockbuster are able to mail at a discounted letter automation
19 rate on the outbound trip, and to pay single-piece, First-Class Mail letter rates on the
20 return trip. GameFly would argue that this choice is only acceptable to Netflix and
21 Blockbuster, because the Postal Service ensures a low level of DVD breakage by
22 agreeing unreasonably to process Netflix DVDs manually, outside of the automated
23 mailstream. That might be a serious indictment of the Postal Service' operations, if it

1 were accurate. In fact, however, while a substantial proportion of Netflix DVD return
2 volume is with reason processed manually, a not insignificant amount is processed on
3 machines. That amount, moreover, is at least as large as GameFly's entire volume.
4 Local processing decisions, in fact, are not as uniform as GameFly implies, and,
5 depending on local conditions and procedures, other patterns of processing have
6 emerged. Furthermore, there are other DVD mailers, probably much smaller than even
7 GameFly, who choose to mail at the letter mail rate. For them, as well as for Netflix and
8 Blockbuster, the choice of mailing at that classification arises from business decisions
9 that take account of risk and expense as a cost of doing business under their chosen
10 business models.

11 Viewed less simplistically than GameFly describes the situation, GameFly's
12 choices are products of its own, relatively distinct objectives. The record and testimony,
13 furthermore, support the conclusion that GameFly chooses to mail its DVDs as flats,
14 and takes special measures to reinforce its packaging, for reasons that distinguish it
15 from Netflix and Blockbuster. In particular, GameFly has apparently been more
16 motivated by the desire to minimize theft and loss than Netflix. Part of this impetus
17 comes from the circumstance that game DVDs tend to be more expensive than movie
18 DVDs, and that the consequences of breakage, and perhaps the susceptibility to theft,
19 are heightened in relation to the same risks faced by Netflix. Furthermore, GameFly's
20 own exceptional attention to secure, reinforced packaging would support the conclusion
21 that, for GameFly, the stakes involved in mailing its product are different from those
22 faced by Netflix.

1 GameFly would argue that these conclusions are invalid under the law, and that
2 the only material comparisons that should be considered in evaluating its charges of
3 undue discrimination are its status as a DVD mailer and the susceptibility of DVDs to
4 breakage. Even on these limited terms, however, GameFly's conclusion that it is
5 similarly situated cannot be supported. As discussed above, GameFly does not have
6 the same status as a mailer. It has always chosen to mail at a different rate than Netflix.
7 Furthermore, even the proposition that its DVDs are susceptible to breakage at the
8 same rate as Netflix is subject to question. The Postal Service has filed testimony that
9 suggests that GameFly's situation is more complicated than it describes. In particular,
10 GameFly uses different means of obtaining DVDs for rental; it has different internal
11 processes for handling them and preparing them for mailing; and perhaps even physical
12 differences in the DVDs themselves would support the conclusion that GameFly DVDs
13 might be more susceptible to breakage than movie DVDs rented by Netflix. In this
14 context, GameFly's special efforts to keep its DVDs classified as flats are more
15 understandable, and distance GameFly from its simplistic conclusion that operational
16 distinctions that cause Netflix and Blockbuster to be processed differently in the field are
17 the products of unreasonable decisions at the local level, and that GameFly is forced to
18 pay more for postage by such local operations decisions.

19 **C. Efforts to Influence Local Working Relationships and National**
20 **Policies**

21
22 GameFly represents that Netflix enjoys favored status in the field, and that Netflix
23 agents are given extraordinary and unwarranted access to postal facilities and
24 managers. GameFly supports its characterizations through references to internal Postal
25 Service correspondence. Memorandum at ¶¶ 70-77. According to GameFly, Netflix's

1 efforts reflect an “extraordinary license” that Netflix agents have been given to influence
2 local decisions through site visits, among other means. *Id.* at ¶ 70. GameFly points to
3 detailed reports on operations and service performance sent by Netflix representatives
4 to various levels of Postal Service management. These reports and other
5 communications frequently point out problems and make detailed suggestions for
6 specific solutions. In some instances, they recite favorable responses by Postal Service
7 management to Netflix’ proposals. GameFly also notes that this level of involvement by
8 Netflix has provoked critical responses and internal discussions by postal employees in
9 the past.

10 I have reviewed GameFly’s representations and much of the correspondence it
11 cites. I have also reviewed the testimonies of witnesses Belair and Seanor on this topic.
12 I agree that Netflix’s activities reflect an aggressive approach to its relationship with the
13 Postal Service at all levels of operations. I agree that Netflix has enjoyed some success
14 in these efforts, and that postal managers sometimes follow Netflix’s suggestions. I
15 agree that postal managers take these interactions seriously, that they are responsive
16 to criticisms of operating conditions and procedures, and that they take measures to
17 improve operations, where warranted. I agree that sometimes postal managers and
18 other employees chafe at Netflix’ aggressive conduct.

19 What I do not agree is that there is anything irregular or unreasonable about
20 either Netflix’ aggressive efforts or most Postal Service reactions. Many mailers take an
21 active interest in their mail service and attempt to communicate their views to the Postal
22 Service. There is nothing extraordinarily unusual or irregular, however, about Netflix’
23 efforts to influence operations decisions in the field. Many other mailers, large and

1 small, who mail in all mail classifications, make efforts to encourage the Postal Service
2 to adopt practices that promote the quality of mail service, as well as the particular
3 mailers' objectives. These practices are typical in a large, complex service industry
4 such as that represented by the Postal Service and its competitors. In fact, it would be
5 highly unusual for a mailer who spends hundreds of thousands to millions of dollars on
6 mail service not to attempt to improve its service in this fashion.

7 GameFly is no exception. The Postal Service' field witnesses provide concrete
8 examples that place GameFly's allegations in practical perspective. Rather than
9 standing as evidence of unreasonable discrimination, Netflix's activities, as well as
10 GameFly's, should be regarded as natural outgrowths of their relationships with the
11 Postal Service. The allegation that the Postal Service grants unwarranted access and
12 influence to Netflix compared to other mailers, however, is simply wrong.

13 In assessing GameFly's contentions, it is very important to keep them in
14 perspective, and to note that GameFly has selectively cited only those internal
15 communications and parts of documents that support its rhetoric. Other documents, or
16 even the same documents, might undermine those views. For example, GameFly cites
17 an internal communication between postal managers from 2008 to support its argument
18 that Netflix has been given extraordinary license to visit postal facilities. Memorandum
19 at ¶ 70 (GFL543). It is true that this email message documents site visits in a particular
20 location. If you read the entire document, however, you find the following passage:

21 We have issued some simple SOPs over the last few years in order to
22 process Netflix mail and limit damage to their product without having to
23 incur higher costs and give Netflix the same level of service we provide to
24 all of our customers. When Netflix representatives tour your facility they
25 are expecting to observe the basic requirements that we have been

1 outlining for years to prevent damage in processing DVDs in an
2 automation environment.

3
4 We have made steady progress in reducing Netflix damage rates and
5 must continue to implement these basic processing procedures. Netflix
6 representatives may offer recommendations but should not try to change
7 processing procedures at your site.

8
9 *Id.*

10 While I have not
11 reviewed every internal communication that might be cited either to support or refute
12 GameFly's arguments, my guess is that this response is typical of field management's
13 reactions to Netflix's aggressive efforts. In particular, it reflects the Postal Service'
14 professional, responsible response in the context of rational operations policies. What it
15 does not reflect, in my opinion, is any undue or unreasonable discrimination.

16
17 **III. The Postal Service follows a sound policy of deferring to field discretion**
18 **in making operations decisions.**
19

20 **A. Local versus National Decision-Making**

21 The Postal Service maintains a vast and extremely complex operating system
22 that has evolved over many years to provide mail service to an enormous and widely
23 diversified spectrum of customers. In this system, the interplay of numerous variables
24 favors a decentralized approach to operations management that relies substantially on
25 local decision-making. Because the mail enterprise takes place in the context of
26 substantially different geographies, operating conditions, and economic and social
27 environments, the need to make decisions tends to favor a system that is flexible
28 enough to react to diverse practical goals and problems throughout the nation while

1 undergoing constant change. In this context, variations in staffing, weather, mail flow,
2 transportation capabilities, and other factors such as natural disasters, create a
3 continually shifting operating environment. While there are many instances in which
4 standardized procedures are preferred for different reasons, by and large
5 determinations affecting acceptance, processing, transportation, and delivery of mail
6 depend heavily on local decisions. The postal system, furthermore, has evolved over
7 many years of trial and adjustment, and it makes the most practical and administrative
8 sense in most respects.

9 Headquarters directives tend to be focused on processes which are national in
10 scope, or have nationwide impacts. Some examples of these might be the development
11 and maintenance of service standards, the establishment of a national critical entry time
12 for Standard Mail products, or the handling of Mail Transport Equipment to reallocate
13 resources where it is needed. Particularly with regard to GameFly's assertions
14 concerning the processing of DVD mail, reliance on local discretion has proved to be
15 the best approach. As shown in witnesses Belair's and Seanor's testimonies, local
16 decisions respond appropriately to the needs and problems presented by this mail,
17 including the particular needs and practices represented by different mailers such as
18 GameFly and Netflix. Furthermore, while a general pattern of processing has emerged
19 over time, it is by no means entirely uniform throughout the system.

20 **B. Local Processing of DVD Mail**

21 As witnesses Belair and Seanor demonstrate, operations practices involving the
22 processing of DVD mail are supported by sound reasons and are well-justified. Even
23 without national directives, the patterns of processing Netflix versus other mailers'

1 volume have evolved out of the practical realities faced In the field. While I am not
2 aware of any comprehensive cost studies or operations analyses that dictate field
3 operations in this regard, local decisions are supported by the logic of each individual
4 set of circumstances, reliance on local data and experience, and judicious coordination
5 at both District and Area levels of administration. Headquarters does not impose a
6 discriminatory formula on local decisions. If there are similarities in approach to Netflix
7 mail in the field, it is because operational decisions have arisen from similarities in the
8 mailing environment.

9

10 **C. Reliance on Postal Service Documents**

11 GameFly advances its claims of unreasonable and undue discrimination from
12 different directions. It makes several constructive legal arguments aimed at invalidating
13 any possible defenses that the Postal Service might express. For example, it compares
14 the circumstances of DVD mail processing to a situation in which two customers,
15 similarly situated, are given different service at the same price. Memorandum at ¶¶
16 126-30. It argues that, legally, local decision-making cannot absolve the Postal Service
17 from its responsibility for the consequences of its unlawful discrimination. *Id. at* ¶¶ 132-
18 40. It argues that capacity constraints cannot justify discrimination under the law. *Id. at*
19 ¶¶ 150-57. It argues that the Postal Service' treatment of Netflix violates the "filed rate
20 doctrine." *Id. at* ¶¶ 158-64.

21 On a factual level, GameFly draws a picture of a uniform and pervasive practice
22 by the Postal Service of providing preferred, manual processing for Netflix DVD mail, as
23 well as other preferences, while denying that treatment to GameFly and other mailers.

1 *Id. at* ¶¶ 57-69. In painting this portrait, GameFly strongly implies that local mail
2 processing decisions are either directed or endorsed by national policy. Without relying
3 on its own cost study, it challenges the possibility that the pattern of the local decisions
4 that it observes could be justified by reasonable cost estimation, or by practical and
5 efficiency considerations. *Id. at* ¶¶ 141-49. It denies that any capacity constraints might
6 exist that would support the Postal Service' local decisions. *Id. at* ¶ 151.

7 GameFly's methodology in supporting its position is relatively simple. Through
8 discovery, it has obtained thousands of emails and other Postal Service internal
9 communications and documents. It has not conducted a systematic review of all of the
10 documents or provided testimony to support its conclusions. Rather, it has cited
11 particular documents selectively to support its arguments. It has also drawn
12 conclusions about certain of the communications. For some of these, it implies that
13 they are, in effect, admissions that the Postal Service unduly discriminates in favor of
14 Netflix.

15 I understand GameFly's approach, but I disagree strongly with its methodology,
16 and I disagree particularly with its conclusions. I do not believe that a collection of
17 cherry-picked email messages and other internal documents, such as internal briefing
18 slides and handwritten notes, should be relied upon to support a finding that the Postal
19 Service discriminates unlawfully against GameFly, or in favor of Netflix. Some of the
20 documents on which GameFly relies arose in a context that might place them in an
21 entirely different light than their usage by GameFly would imply. Some of the emails
22 have content not cited that contradicts or qualifies the use that GameFly makes of them.
23 Some of them are misrepresented. It is also expected that some of the emails,

1 designated as evidence of prejudice, may be reflective of healthy discourse between
2 employees with differing ideas, who are attempting to express their personal points of
3 view, rather than expressing official postal policy.

4 I have attempted to survey GameFly's use of these documents to draw
5 reasonable conclusions about whether they support GameFly's complaint. I have not
6 read every page of every document, but I believe I have reviewed enough to make an
7 overall assessment. As a result, I conclude that, insofar as GameFly's case against
8 the Postal Service rests on the documents it cites, they are not reliable as a guide to the
9 charges that the Postal Service discriminates unlawfully. GameFly has apparently not
10 undertaken a systematic review of all internal communications bearing on the issues,
11 but rather has embarked upon a haphazard selection of only those documents that
12 support its inflated representations.

13 In this regard, I would first observe that GameFly draws from a variety of types of
14 documents that span a wide range of time. There does not seem to have been any
15 attempt to describe a chronological progression of Postal Service policy and practices,
16 or a summary of current practices. Rather, the references jump back and forth in time.¹
17 In this regard, I believe that there have been significant changes in policies and
18 practices, on the parts of both the Postal Service and DVD mailers. GameFly does not
19 appear to have attempted to encapsulate its allegations regarding current policy with

¹ This pattern pervades the entire memorandum. See, e.g., Memorandum, at ¶ 58, which cites "multiple upgrades from ordinary processing" and cites GFL1364 (July 2009), GFL4 (July 2005), GFL8-9 (September 2003), GFL29 (unknown), GFL30 (May 2005), GFL33 (November 2003), GFL101 (March 2005), GFL272 (April 2002), GFL272 (July 2002), GFL 428 (July 2003), GFL458 (unknown), GFL509 (April 2002), GFL527-34 (March 2005), GFL934 (August 2006), GFL1364 (July 2009), GFL1484-85 (October 2005), GFL7359-61 (October 2007).

1 any systematic, let alone comprehensive, description by reference to recent documents.
2 Many of the key citations are to documents ranging back to 2002. Relatively few
3 originated within the last three years. Many are five years old or older. As reflected in
4 the testimonies of witnesses Belair and Seanor, mail processing changes over the last
5 five years have been extensive on many fronts.

6 GameFly also exhibits a tendency to rely heavily on certain documents that it
7 apparently believes support its arguments especially well. There are repeated
8 references to the same internal communications and other documents.² Some of these
9 represent obsolete policies and practices. For example, GameFly repeatedly refers to a
10 2005 Area office directive to the field offices under its aegis that was rescinded in 2007.³
11 There is at least one high level communication to the Postal Service from Netflix that
12 has achieved favored status, judging by the repeated references to it.⁴ GameFly is
13 also prone to quote repeatedly from internal documents containing language critical of
14 Postal Service decisions. These documents reflect opinions not intended to be official
15 representations of postal policy, or that do not represent consensus opinion in any
16 demonstrable way.⁵

17 GameFly even cites selectively to parts within the same documents. It
18 sometimes cites a part of an internal communication to support a contention that the
19 Postal Service maintains a consistent policy or practice favoring Netflix or Blockbuster,
20 while another part of the same document indicates a conclusion not necessarily

² See, e.g., Memorandum at ¶¶ 33, 58, 77, 92 (GFL 1484-84); ¶¶ 46, 90, 92 (GFL523-25); ¶¶ 51, 58, 59 (GFL 527-34); ¶¶ 58, 62, 113 (GFL30); ¶¶ 59, 70, 140 (GFL 543).

³ See GFL 527-34.

⁴ GFL1484-85.

⁵ Memorandum, at ¶ 49 (GFL80128); ¶ 58 (GFL428).

1 favorable to those mailers.⁶ It also cites documents attempting to support its
2 characterization of a uniform approach to operations, while other documents it cites
3 show, if anything, the coexistence of a diversity of operations and practices, depending
4 on local conditions.⁷ As noted above, furthermore, some of the practices it attempts to
5 demonstrate have been overtaken by time and circumstances, and no longer apply.⁸

6 GameFly quotes from a broad variety of document types. Many are internal
7 email messages between postal employees.⁹ Some are communications with mailers.¹⁰
8 Quite a few are slide presentations given, or at least prepared, either within the Postal
9 Service, or for the Postal Service by mailers.¹¹ Some of these slides merely present
10 bullet points that are tersely expressed and do not obviously lead to the expanded
11 conclusions about them that GameFly represents.¹² A few of the documents cannot be
12 identified by author, circumstance, or even date.¹³ Some are handwritten notes
13 summarizing meetings or personal views that are clearly not intended to represent the
14 Postal Service' official views.¹⁴

⁶ Memorandum, at ¶ 59 (GFL543, cited as GFL533-GFL551); ¶ 98 (GFL340, compare entire email chain GFL339-43)

⁷ Memorandum, at ¶ 59 (compare GFL545, GFL548, compare GFL 558-59, GFL 562), ¶ 36 (GFL 24-26)

⁸ Memorandum, at ¶ 59 (GFL 558-59).

⁹ Memorandum, at ¶ 134 (GFL81093).

¹⁰ Memorandum, at ¶ 77 (GFL290).

¹¹ Memorandum, at ¶ 41 (GFL78090); ¶ 72 (GFL73949).

¹² Memorandum, at ¶ 41 (GFL78090, GFL79119); ¶ 118 (GFL78009)

¹³ Memorandum, at ¶ 143 (GFL458); ¶ 146 (GFL857)

¹⁴ Memorandum, at ¶ 86 (GFL189; ¶ 143 (GFL11115)

1 In some instances, GameFly cites internal correspondence as evidence of an
2 interpretation of Postal Service intentions that the citations do not directly support.¹⁵ I
3 even found one citation used to support the description of an increasing trend or
4 practice that predated the time period GameFly was describing.¹⁶ Some of the
5 descriptions or opinions in cited documents are just ambiguous.¹⁷ Hardly any of all of
6 the documents cited refer to GameFly specifically.

7 Among the most unsettling of GameFly's references are some that GameFly
8 strongly implies represent admissions by the Postal Service of unlawful discrimination.
9 Most of these involve individual opinions expressed at lower levels of the organization,
10 and are inferred from the language used by the authors.¹⁸ Few, if any, are official
11 communications on behalf of the Postal Service expressing Postal Service policies.
12 Several of these inferences arise from references to speculations about risks of legal
13 action as a result of the Postal Service' operations practices, either actual or
14 hypothetical.¹⁹ I am not aware that any of these represent legal opinions expressed on
15 behalf of the Postal Service.

16 I would flatly reject the conclusions regarding liability for discrimination that
17 GameFly implies by referring to these documents and drawing unfounded inferences
18 about their meaning. To the extent that GameFly is citing them merely for rhetorical
19 effect, I believe it has engaged in a significant disservice to the record and to the truth.

¹⁵ See Memorandum, at ¶ 41 (GFL78090, GFL79119); ¶ 137 (reference to "real purpose" of official statements, supported by GFL347-48, GFL 315-16, GFL327-29, GFL337)

¹⁶ Memorandum, at ¶ 140 (GFL562).

¹⁷ See Memorandum, at ¶ 53 (GFL81091).

¹⁸ See Memorandum, at ¶¶ 113-20, 134-40.

¹⁹ See, e.g., Memorandum, at ¶ 114 (GFL1); ¶ 115 (GFL805).

1 I am certain that GameFly will react to this discussion by repudiating my own
2 conclusions about the use it has made of references to internal Postal Service
3 communications. GameFly is likely to respond with indignation, and in the same
4 intemperate tone that seems to have characterized its rhetoric in this entire proceeding
5 so far. Nevertheless, in choosing to avoid scrutiny of its own views by relying only on
6 Postal Service selected internal documents, rather than sponsoring its own testimony,
7 GameFly has created a seriously deficient case to support its unfounded allegations of
8 unlawful discrimination.

9

10 **IV. The Postal Service does not grant Netflix other unreasonable**
11 **preferences.**

12
13 The full scope of GameFly's arguments encompasses more than operations
14 decisions. GameFly is critical of the Postal Service' failure to establish a separate rate
15 for round-trip DVD mail that would be lower than the price GameFly pays for flats, but
16 higher than Netflix and Blockbuster pay for letters. *Id.* at 83-92. GameFly also
17 contends that the Postal Service' discrimination in favor of Netflix and Blockbuster
18 manifests itself in existing pricing decisions. In particular, it complains that, contrary to
19 the views of its own engineers, the Postal Service has chosen not to charge Netflix
20 return DVDs a nonmachinable surcharge. Memorandum at ¶¶ 44-56. It attributes each
21 of these Postal Service positions to Netflix's alleged unreasonable influence over Postal
22 Service decisions.

23 **A. DVD Rate**

24 In addition to complaining that it pays too much for postage, GameFly asserts
25 that Netflix pays too little. GameFly has elected to mail at a higher rate for First-Class

1 Mail flats than Netflix, which pays the lower rates for First-Class Mail letters. As I
2 understand GameFly's complaint, it has not challenged the specific rates for either the
3 flats or letter categories in First-Class Mail as inconsistent with statutory policies, but
4 has attempted to demonstrate that the differential that arises from those rates is
5 inequitable, compared to the differences in costs that those categories represent.
6 GameFly contends that this disparity is an outgrowth of the discrimination that it alleges.

7 In connection with this position, GameFly asserts that the Postal Service has
8 avoided establishing a distinct rate that matches the level of service allegedly afforded
9 to Netflix as a result of field operations decisions to process Netflix return DVD mail
10 manually. *Id.*, at ¶¶ 83-92. GameFly alleges that, since 2002, the Postal Service has
11 "shrunk" from establishing a separate rate category in First-Class Mail that would
12 provide a rate that more closely corresponds to the costs of manually processing
13 Netflix's DVD mail. GameFly refers to internal Postal Service correspondence and
14 documents to support its contentions that, on several occasions, the Postal Service has
15 failed to follow through on proposals to create a separate classification for DVD mail.
16 GameFly strongly implies that the Postal Service' failure to act is a result of Netflix'
17 influence and the Postal Service' discriminatory reluctance to make a large customer
18 pay more.

19 It is not the purpose of my testimony either to critique or defend First-Class Mail
20 rates or Postal Service pricing policy. I would note, however, that GameFly's arguments
21 primarily have implications for rate design and pricing policy, rather than its complaint
22 which alleges that the Postal Service has discriminated unreasonably in favor of Netflix
23 in its field operations decisions. In this connection, it is important to understand that

1 rate design for First-Class Mail involves many considerations not addressed in
2 GameFly's testimony.

3 First-Class Mail has always represented a highly diverse mailstream that spans
4 mailing practices of a wide spectrum of mailers. First-Class Mail rates, furthermore,
5 have always been characterized by a high degree of cost aggregation and averaging.
6 The goal of rate simplicity has heavily influenced rate design. Only recently has shape
7 affected rate structure. Policy considerations, such as national uniformity, the integer
8 rule, and the effects on the diverse mailing community, including individuals who mail at
9 single-piece rates (the rates used by Netflix as well as GameFly), are very important in
10 establishing First-Class Mail pricing. The point is that few of these factors can justifiably
11 be used to identify undue discrimination against or for any one mailer. First-Class Mail
12 rates reflect important choices of pricing policy that lie squarely within the Postal
13 Service' management prerogatives, and its pricing discretion and flexibility under the
14 current statutory scheme. Failure to choose a First-Class Mail rate structure that
15 benefits a particular mailer, or choosing one that disfavors any other mailer, cannot be
16 reliably evaluated in the highly biased and incomplete context that GameFly describes.

17 **B. Letter Mail Machinability**

18 GameFly further complains about the alleged "unjustified classification" of Netflix
19 mail as machinable, and the practice of not imposing a nonmachinable surcharge on
20 Netflix's return DVD mail. *Id.* at ¶¶ 44-49. GameFly cites the Postal Service'
21 determination and practice as a further example of discrimination in favor of Netflix.

22 In support of its allegations, GameFly points to a decision made in 2002 by the
23 Postal Service' Manager, Mail Preparation and Standards. That decision stated that the

1 mailpiece used by Netflix for its outbound and inbound DVD mail was eligible for
2 automation letter rates on the outbound trip, and was machinable, and not subject to a
3 nonmachinable surcharge on the inbound trip. GameFly contends that this decision
4 was inconsistent with opinions expressed by the Postal Service' Engineering
5 Department. GameFly further notes that its criticisms are supported by a November,
6 2007, Report by the Postal Service' Office of the Inspector General. *Id.* at ¶ 50.

7 My understanding of the decision that was made in 2002 is that it was consistent
8 with the applicable machine specifications for processing letter mail and with the
9 conclusions cited in the letter communicating the decision to Netflix. The Postal
10 Service' determination not to charge the nonmachinable surcharge for Netflix DVD
11 return mail was a pricing decision consistent with the findings described in the letter.
12 From that standpoint, the criticism that the decision was influenced by intervention of
13 the Marketing Department is misplaced, since Marketing shares responsibility for pricing
14 policy.

15 In any event, the decision whether or not to impose a nonmachinable surcharge
16 does not undermine the operations considerations that support the Postal Service'
17 processing decisions affecting DVD mail in the field. Those decisions are explained in
18 the testimonies of witnesses Belair and Seanor, with which I agree.

19

20 **C. Mail Drop Slots**

21 GameFly devotes considerable attention to an alleged field practice of providing
22 drop slots in Post Office lobbies for the collection of Netflix return DVD mail. *Id.* at ¶¶

1 78-82. GameFly contends that these drop slots represent another manifestation of
2 discrimination in favor of Netflix in operations.

3 I understand that this issue has been a topic of considerable discussion in the
4 discovery process, but that this is one area where the Postal Service has directed field
5 units not to maintain such slots. Beyond that, I might note that, in my opinion, drop slots
6 for Netflix mail would not be an illogical measure, if taken to implement operations
7 decisions to segregate that mail for more efficient and effective processing. As noted in
8 the Postal Service' other testimony, dedicated drop slots would be consistent with the
9 field decisions that support the processing distinctions employed by local managers for
10 the treatment of DVD mail. In fact, these decisions are similar to the decisions to
11 segregate IRS returns during tax time. Nevertheless, as I understand the situation—use
12 of this practice as evidence of alleged discrimination—the practice was never approved
13 and has been removed.

14

15 **V. Mailers Make Choices**

16 Companies that elect to purchase mail products exercise choices in the context of
17 their business needs and expectations. GameFly's complaint rests on the proposition
18 that its choices are constrained by the service it has reason to expect from mailing at
19 First-Class Mail letter rates. In fact, GameFly has chosen not to elect those rates, but
20 rather to mail as First-Class Mail flats. It has chosen to reinforce its mailpieces with
21 inserts to achieve particular objectives under that classification, and that decision has
22 increased the weight of the mailpiece and the postage. GameFly's argument is that it
23 should not have to make those choices. It should be entitled to mail at the lower letter

1 rates and expect the same kind of processing and freedom from risk of damage that
2 Netflix experiences.

3 I follow GameFly's logic, but I do not agree with its conclusions. The assumptions
4 GameFly makes are comprehensible, but they are not justified in the context of postal
5 operations. GameFly's expectations, furthermore, are undermined by the nature of
6 First-Class Mail service, as well as a range of considerations not necessarily shared by
7 Netflix that apparently influence GameFly's choices. In this regard, GameFly does not
8 stand on the same footing as Netflix in evaluating the reasonableness of the Postal
9 Service' operations decisions.

10 **A. First-Class Mail**

11 A critical element of GameFly's case is its apparent assertion that purchase of
12 First-Class Mail service guarantees a particular set of processing operations. Because
13 most First-Class Mail single-piece letters are processed by machine, GameFly argues
14 that processing it manually in substantial quantities is forbidden, unless such
15 operational practices are embodied in a separate mail category with distinct rates.
16 Consistent with this argument, GameFly contends that manually processing Netflix
17 return mail represents undue discrimination against any DVD mailer whose letter mail is
18 processed by machine. This characterization, however, does not represent operational
19 realities, and it does not accurately represent the status of First-Class Mail service, as I
20 understand it.

21 First-Class Mail products embody a service commitment, but no particular
22 operations. In this respect, the First-Class Mail single-piece letter mailstream
23 encompasses a wide diversity of mailpieces. Operational realities demand that the

1 Postal Service have maximum flexibility to process this mail in the way dictated by
2 practical and efficiency considerations. Even if the service commitment implies certain
3 operations, requirements that would limit operations flexibility would be confined to a
4 very narrow range of operational choices, such as use of the most expeditious form of
5 transportation available and warranted. As an example, in that narrow context in
6 particular, the Postal Service is not required to provide air transportation, even though
7 much First-Class Mail travels by air. The Postal Service has the option, which it
8 routinely exercises, to transport First-Class Mail by ground. By the same token, even if
9 GameFly were to elect to mail at First-Class Mail letter rates (and it has not), that
10 product would not guarantee that its mail be processed through any particular
11 operations, if those were inconsistent with local management determinations.

12

13 **B. GameFly's Choice**

14 A second critical element of GameFly's case rests on its assertion that Postal
15 Service operations decisions in the field have forced GameFly to choose to mail at
16 higher flats rates. GameFly reaches this conclusion by assuming that avoidance of the
17 risk of damage to DVDs in mail processing is guaranteed by the purchase of First-Class
18 Mail service. It is not.

19 I am not an expert in the Postal Service' legal liability for damage to items that
20 are mailed, but I do know that, as a practical matter, a mailer takes a risk when mailing
21 items that are known to be susceptible to damage in the mailstream. GameFly's
22 discussion of what it refers to as a "common industry problem" cannot eliminate that risk
23 as a consideration that must be factored into any mailer's choices. In fact, I believe that

1 other mailers of DVDs, when faced with the same range of choices faced by GameFly,
2 have chosen to mail at letter rates like Netflix. In saying this, I do not imply that the
3 Postal Service is unconcerned about damage, or that it does not take reasonable
4 measures to minimize it. Just as mailers must consider it, however, the risk of damage
5 is one of several considerations that must be factored into the Postal Service' decisions
6 about how to process particular mail products.

7 In short, the Postal Service' operations decisions, including those affecting how
8 Netflix's return letter mail is processed, have not "forced" GameFly to mail at a higher
9 rate. As explained in witnesses Belair's and Seanor's testimonies, the Postal Service'
10 decisions in the field attempt to achieve the appropriate balance among all relevant
11 operations considerations. They are not the product of any concerted attempt to
12 discriminate in favor of any mailer.

13 For GameFly, as for any other company that mails DVDs, damage is a cost of
14 doing business. In this respect, it is overly simplistic for GameFly to assert that even
15 Netflix or Blockbuster need not be concerned about damage, because they benefit from
16 discrimination. As explained in the Postal Service' testimony, local processing
17 decisions are not uniform in attempting or achieving manual processing of Netflix or
18 Blockbuster return DVD mail. GameFly itself has acknowledged that Netflix, in
19 particular, takes aggressive measures to ensure that breakage is minimized In the field.
20 For GameFly, or other mailers, its business choices are reflected in the rate,
21 classification, and entry profile that it uses, the packaging of the mail, the type and
22 number of collection points for return mail, and the quantities mailed, among other
23 things. All of these considerations, furthermore, could affect the consequences of

1 mailing, including service performance experienced and damage or theft experienced in
2 the mailstream.

3 In this case, GameFly argues that, by not offering to process its mail manually to
4 the same degree as Netflix mail, the Postal Service has “forced” GameFly to mail at a
5 different classification and at a higher rate. This argument, however, is seriously
6 misleading. GameFly pays for return DVD mail at the 2-ounce flat rate, and insists on
7 *machine processing* on the return trip,²⁰ because it is unwilling to subject itself to the
8 consequences of mailing at lower volumes than Netflix, and with fewer collection points
9 that do not justify the treatment Netflix receives. As explained by witnesses Belair and
10 Seanor, Netflix receives different treatment, because Netflix’s mailing patterns and
11 practices permit the Postal Service to avoid additional processing steps during a short
12 window of opportunity for completing the timely processing of all mail.

13 The Postal Service’ failure to guarantee GameFly manual processing where it is
14 not warranted by local operating conditions is not an element of discriminatory treatment
15 against GameFly, even if Netflix benefits from manual processing where it is warranted.
16 A number of other choices likely contribute to GameFly’s decision to mail at flat rates in
17 nondescript packaging. Foremost among these is probably the desire to avoid theft.

18 GameFly’s companion argument is that the Postal Service’ disinclination to issue
19 a national directive dictating manual processing for GameFly, rather than leaving the
20 matter to local discretion, amounts to a *de facto* refusal to provide to GameFly the same
21 allegedly preferential treatment that Netflix enjoys. This is faulty logic. The
22 consequences of GameFly’s own capabilities and choices, namely, local decisions to

²⁰ Machine processing also generates the CONFIRM Service scan GameFly uses as a trigger for the mailing of that DVD customer’s next queued selection.

1 process its mail in the most efficient and effective manner, do not amount to a refusal to
2 do anything. Only by overriding the justifiable local decisions to process the mail
3 appropriately could the Postal Service elect to do what GameFly demands. GameFly
4 may not have all of the advantages Netflix has, but it is not because the Postal Service
5 unreasonably refused to provide them. Rather, they are a consequence of the
6 differences that GameFly and Netflix present.

7

8 **C. Similar Treatment**

9 GameFly's contention that the Postal Service refuses to provide the mail
10 processing that Netflix' return DVD mail receives is contradicted by the Postal Service'
11 representation that it would provide such processing, if GameFly meets conditions that
12 would place it on a comparable footing with Netflix. The Postal Service has offered to
13 treat GameFly the same as Netflix under certain conditions. In a letter to GameFly's
14 counsel dated May 12, 2010, Andrew German outlined the conditions upon which
15 GameFly would be provided manual processing for return DVD mail comparable to the
16 processing provided to Netflix at the First-Class Mail letter rate.²¹ The conditions
17 described by Mr. German are warranted, because they support and drive the local
18 decisions that have been relied upon in the field to process substantial Netflix mail
19 manually. The Postal Service' Field witnesses, furthermore, support this commitment as
20 realistic.

21 Mr. German emphasized that, in making this representation, the Postal Service is
22 not abandoning its operations policy approach of leaving the mail processing decision to

²¹ See Attachment.

1 local managers. This resolution is consistent with the Postal Service' discretion to
2 determine the most appropriate mix of operations warranted by actual circumstances,
3 rather than abstract notions of parity and alleged non-discrimination.

4

5 **VI. The mail processing environment will evolve in the future.**

6

7 My discussion of GameFly's case would be deficient if I did not clarify that the
8 mail processing environment faced by the Postal Service, GameFly, Netflix,
9 Blockbuster, and other DVD mailers is likely to change in the not too distant future. As
10 a result of these changes, some of which are discussed in the testimonies of witnesses
11 Belair and Seanor, both mailers and the Postal Service will face a different range of
12 choices. Netflix volumes may fall, as it shifts to a different business model that relies on
13 electronic downloading, rather than mail for physical transportation of electronic content.
14 Deployment of new processing equipment (AFCS 200) will limit the Postal Service'
15 capabilities to provide the same mix of operations currently experienced by DVD
16 mailers. GameFly's status may change for the same reasons that Netflix and
17 Blockbuster may change.

18 The Commission should consider these possibilities before it attempts to dictate
19 postal operations, as the result to GameFly's baseless claims of undue discrimination.

20