

**PUBLIC APPENDIX—SEALED MATERIAL IN SEPARATE  
SUPPLEMENT**

ORAL ARGUMENT HAS NOT BEEN SCHEDULED

**IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

|                                |   |             |
|--------------------------------|---|-------------|
| GAMEFLY, INC.,                 | ) |             |
|                                | ) |             |
| <i>Petitioner,</i>             | ) |             |
|                                | ) |             |
| v.                             | ) |             |
|                                | ) |             |
| POSTAL REGULATORY COMMISSION   | ) |             |
| and UNITED STATES OF AMERICA,  | ) | No. 11-1179 |
|                                | ) |             |
| <i>Respondents,</i>            | ) |             |
|                                | ) |             |
| UNITED STATES POSTAL SERVICE,  | ) |             |
|                                | ) |             |
| <i>Intervening Respondent.</i> | ) |             |

**SUPPLEMENTAL APPENDIX TO OPENING BRIEFS**

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February 17, 2012

**TABLE OF CONTENTS**

| <b>Record No.</b> | <b>Document Description</b>  | <b>Appendix Page No.</b> |
|-------------------|--|--------------------------|
| 67997             | Public (Redacted) Versions of Documents Covered by Presiding Officer's Ruling C2009-1/17—Part 1 of 2 [Documents GFL 468; GFL 523-24]           | A000394-A000396          |
| 69368             | Direct Testimony of Nicholas F. Barranca on Behalf of the United States Postal Service (USPS-T-1)  | A000397-A000433          |
| 69572             | Direct Testimony of Larry J. Belair on Behalf of the United States Postal Service  | A000434-A000461          |
|                   | Compendium of Documents Cited in Post-Hearing Brief of GameFly, Inc. [Christensen Studies, August 2006 (C22-C82) and November 2006 (C83-C126)] | A000462-A000566          |

## **ROUND TRIP DISK MAIL Mailers' View**



- **Breakage and damage**
  - Reducing damage by fixing envelope would lead to heavier mailpiece and additional ounce surcharge
- **Issue is not the floppy edge**
  - Nonmachinable surcharge not applicable under current regulations
- **Breakage can be reduced by culling**
  - But mailer does not want to pay surcharge for manual handling

PUBLIC

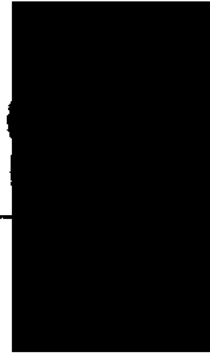
GFL0000468

A000394



US-102

2/10. Copies



US-071  
US-132  
US-167  
US-183  
US-119



February 8, 2006

COPY  
Other P/C  
MAGNAGUI  
(New-Borg)



US-128

SUBJECT: CD/DVD Mailer Issues

The utilization by customers of the two-way CD/DVD mailers in the letter mail stream has been increasing since 2000. The two largest current users of these mailers are Netflix and Blockbuster. Two recurring issues keep arising about the use of this type of mailing package; machinability and disk breakage.

Generally, machinability issues are the result of the design of the two-way mailer and for the most part occur when the two-way mailer is configured as a return piece, from the mailer's customer back to the mailer.

Many sites have reported problems at the AFCS with two-way mailer return pieces, due primarily to jams, and are culling them out at the AFCS and processing them either as flats or as manual pieces. Previous testing by USPS Engineering has confirmed the problems reported by the field and was detailed in a June 11, 2002 memo to Netflix (see attachment B). Extensive testing of two-way CD/DVD mailers by USPS Engineering has identified four mailer characteristics that contribute to poor handling of two-way mailers on USPS automation equipment. These characteristics are included in Attachment A.

Using the knowledge obtained from testing problem two-way mailers, USPS Engineering developed and patented a two-way CD/DVD mailer that is machineable both as an outgoing piece and as a return piece, and still qualifies as a one ounce piece. However, mailers, particularly Netflix, have been less than enthusiastic about adopting the design of the USPS developed two-way mailer to improve machineability of their mailers. Part of Netflix's rationale for not adopting the USPS mailers is the belief that processing of their mailers on the AFCS is causing an increase in disk damage. Thus, they prefer that their disks are culled at the AFCS and processed manually (although they have not volunteered to pay a manual surcharge).

In addition to identifying factors that influence machineability, the testing of current disk mailers by USPS Engineering identified three aspects of letter mail automation and one processing method that can contribute to increased stress on disks. The possible contributors to CD/DVD disk damage are associated with processing through the AFCS or DBCS bullwheels, diverter gates, stacker induction and stacking in trays and tubs. More definition of these issues can be found in Attachment A.

The new DIOSS-D and the AFCS Overhaul will be gentler with disks than the existing automation. The DIOSS-D was designed with larger bullwheels and shallower diverter angles in an effort to "straighten" the mail path. The results of preliminary testing on the DIOSS-D with a small sample are consistent with the belief that there will be less disk damage on the DIOSS-D. However, more testing with a larger sample is required to definitively state that the DIOSS-D reduces disk damage. The AFCS Overhaul will also be using larger bullwheels, and it will be replacing diverters with channel gates. Channels gates will significantly reduce bending stress on disks. The new DIOSS-D machines are currently in deployment and the AFCS Overhaul program is expected to begin implementation in the 2008-2009 timeframe.

PUBLIC

8408 LEE HIGHWAY  
MERRIFIELD VA 22082  
703-280-7001

RECEIVED

FEB 09 2006

Office of CFC/ENV  
Filmmos, USAPE

F2/12/06 D

1

GFL0000523

A000395

In summary, the machineability issue with the two-way CD/DVD mailers can be overcome today if the customers would agree to move to the USPS designed package. The disk damage issue will be significantly improved in the future with the new AFCS and DBCS designs.



US-102

Attachment

PUBLIC

**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**

**TABLE OF CONTENTS**

**AUTOBIOGRAPHICAL SKETCH ..... iii**

**PURPOSE OF TESTIMONY ..... 1**

**I. GameFly’s complaint seeks lower rates. .... 2**

**II. The Postal Service does not favor large versus small mailers in an  
irrational or undue way..... 4**

**A. Large versus Small..... 4**

**B. GameFly versus Netflix and Blockbuster..... 7**

**C. Efforts to Influence Local Working Relationships and National  
Policies..... 11**

**III. The Postal Service follows a sound policy of deferring to field  
discretion in making operations decisions..... 14**

**A. Local versus National Decision-Making ..... 14**

**B. Local Processing of DVD Mail..... 15**

**C. Reliance on Postal Service Documents. .... 16**

**IV. The Postal Service does not grant Netflix other unreasonable  
preferences..... 22**

**A. DVD Rate..... 22**

**B. Letter Mail Machinability..... 24**

**C. Mail Drop Slots. .... 25**

**V. Mailers make choices. .... 26**

**A. First-Class Mail..... 27**

**B. GameFly’s Choice. .... 28**

**C. Similar Treatment..... 31**

**VI. The mail processing environment will evolve in the future..... 32**



## **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**

1  
2  
3 The purpose of this testimony is to address several issues raised by GameFly,  
4 Inc.'s, Complaint against the Postal Service. GameFly has alleged that the Postal  
5 Service engages in undue or unreasonable discrimination against GameFly, and in  
6 favor of Netflix, Inc. and Blockbuster. I will explain the Postal Service' defense against  
7 these allegations, and place them in context from the perspectives of postal operations,  
8 the Postal Service' business, and the Postal Service' policy objectives for its customers  
9 and the public. In the following discussion, I will rely substantially on the testimony of  
10 Postal Service witnesses Belair (USPS-T-2), Seanor (USPS-T-3), and Lundahl (USPS-  
11 T-4).

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

---

<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>  
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.<sup>4</sup> 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.<sup>5</sup>

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

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<sup>2</sup> 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).

<sup>3</sup> See GFL 527-34.

<sup>4</sup> GFL1484-85.

<sup>5</sup> Memorandum, at ¶ 49 (GFL80128); ¶ 58 (GFL428).

1 favorable to those mailers.<sup>6</sup> 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.<sup>7</sup> As noted above, furthermore, some of the practices it attempts to  
5 demonstrate have been overtaken by time and circumstances, and no longer apply.<sup>8</sup>

6 GameFly quotes from a broad variety of document types. Many are internal  
7 email messages between postal employees.<sup>9</sup> Some are communications with mailers.<sup>10</sup>  
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.<sup>11</sup> 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.<sup>12</sup> A few of the documents cannot be  
12 identified by author, circumstance, or even date.<sup>13</sup> Some are handwritten notes  
13 summarizing meetings or personal views that are clearly not intended to represent the  
14 Postal Service' official views.<sup>14</sup>

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

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

<sup>8</sup> Memorandum, at ¶ 59 (GFL 558-59).

<sup>9</sup> Memorandum, at ¶ 134 (GFL81093).

<sup>10</sup> Memorandum, at ¶ 77 (GFL290).

<sup>11</sup> Memorandum, at ¶ 41 (GFL78090); ¶ 72 (GFL73949).

<sup>12</sup> Memorandum, at ¶ 41 (GFL78090, GFL79119); ¶ 118 (GFL78009)

<sup>13</sup> Memorandum, at ¶ 143 (GFL458); ¶ 146 (GFL857)

<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup> Some of the  
5 descriptions or opinions in cited documents are just ambiguous.<sup>17</sup> 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.<sup>18</sup> 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.<sup>19</sup> 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.

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

<sup>16</sup> Memorandum, at ¶ 140 (GFL562).

<sup>17</sup> See Memorandum, at ¶ 53 (GFL81091).

<sup>18</sup> See Memorandum, at ¶¶ 113-20, 134-40.

<sup>19</sup> 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,<sup>20</sup> 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

---

<sup>20</sup> 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.<sup>21</sup> 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

---

<sup>21</sup> 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

**USPS-T-2**

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

COMPLAINT OF GAMEFLY, INC.

Docket No. C2009-1

**DIRECT TESTIMONY OF  
LARRY J. BELAIR  
ON BEHALF OF THE  
UNITED STATES POSTAL SERVICE**

As Supplemented on August 6, 2010

A000434

TABLE OF CONTENTS

|                         |    |
|-------------------------|----|
| Table of Contents       | i  |
| Autobiographical Sketch | ii |
| Direct Testimony        | 1  |
| Supplemental Testimony  | 20 |
| Conclusion              | 23 |

### Autobiographical Sketch

My name is Larry J. Belair. Since December 2009, I have served as Senior Plant Manager for the United States Postal Service, San Diego District. My responsibilities include the administration of policy and program oversight for mail processing operations within the San Diego District, which includes two processing and distributions centers, one processing and distribution facility, one independent delivery distribution center, and approximately 2000 employees.

A second generation postal employee, I began my career in 1994 as a Parcel Post Distribution Machine Operator at the Minneapolis Processing and Distribution Center. Over the past 16 years, I have served in a variety of leadership positions including, most recently, Manager, In-Plant Support Pacific Area; Manager, In-Plant Support Saint Paul P&DC; and Manager, Distribution Operations at Minneapolis P&DC.

I studied Economics, and Housing in Urban Studies, at the University of Minnesota-Minneapolis and St. John's University in Collegeville, MN. I have participated in the Advanced Leadership Program (ALP) and Executive Leadership Program (ELP) sponsored by the United States Postal Service.

As Manager, In-Plant Support for the Pacific Area, I had the responsibility to review, initiate and implement measures that enhance cost savings, operational efficiency, and process improvement with the goal of providing premier, cost effective service to customers while strengthening the value of all postal product lines. Led by the Pacific Area Manager of Operations Support, we achieved these objectives by working closely with District and local leadership

teams representing field operations management. We fostered collaboration among field operations and Operational Industrial Engineers (OIEs), using Lean Six Sigma (LSS) principles to identify mail flow improvements for each district and actively tracking progress toward goals, thereby maximizing performance.

The development and empowerment of District and local leadership teams increased employee commitment to efficient customer service through improved operational practices. Some key successes included the centralization and development of standardized web applications, field strategy development related to cost reductions and improved operational efficiencies (*e.g.*, overtime usage, complement control, budget targets, service performance goals, mail conditions, percentage of mail to service standard in delivery, DPS percentages and manual mail percentages), and Senior Operations Manager (SOM) training material. I also facilitated the development and implementation of field operations training that encourages employee responsibility for identifying and implementing cost reduction and service improvement strategies. The success of field operations collaboration and use of LSS principles helped rank the Pacific Area number one nationally in (1) tour compression (*i.e.*, reducing workhours during non-peak timeframes) and employee migration to tour hours when more mail was “in-house”; (2) automated flat processing; (3) reducing the amount of legacy (and aging) Mail Processing Equipment; (4) Lean Six Sigma certified staff; and (5) reducing within plant Function 1 workhours compared to SPLY--in fact for two consecutive years. These activities resulted in an operational cost savings of more than \$150 million for the Postal Service.

As Senior Plant Manger of the San Diego District, I continue working with field and area associates on cost reduction, operational improvements and superior customer service. I actively engage my employees with collaborative processes that encourage participation in strategic planning and reliance upon the expertise of seasoned operations managers, OIEs, and LSS subject matter experts. As a result, field managers drive process development, compliance with operational standards, resource management and service improvement.

The continuance and further development of these strategies have ranked San Diego District Plants: (1) number two nationally (of 79 districts) year-to-date in Voice of the Employee survey; (2) number one in Pacific Area and top five nationally in 2-Day EXFC (External First-Class Mail measurement); (3) number one in Pacific Area and top five nationally in 3-Day EXFC service; (4) number two in Pacific Area and top 10 nationally within combined Delivery Confirmation Priority Mail Retail; (5) number one in Pacific Area and 10 nationally in Priority Mail Open and Distribute (PMOD), and finally (6) number one in Pacific Area in overtime avoidance. Those national performance indicators speak to the dedication, commitment, and teamwork I and my team bring to work each day to capture efficiencies and provide exceptional customer service.

1           **1. Purpose of Testimony.**  
2

3           The purpose of my testimony is to provide an overview of how and why letter and  
4 flat shaped mail containing a DVD is processed both on the outbound trip from a DVD  
5 round trip mailer to customers and then inbound from customers back to a mailer's  
6 processing facility. My experience with the Postal Service ranges from a position as a  
7 front line manager to an operations executive (and is detailed above). That experience  
8 makes me an expert on the flow of DVDs through the mail and able to explain why  
9 various operational activities are undertaken for DVD mail.

10           I served as a front line manager of distribution and processing operations when  
11 the DVD market began to develop. I am uniquely situated, because of my experience  
12 managing operations and resolving challenges with a wide variety of customers, and  
13 therefore able to provide insight on how general changes in the mail mix affect postal  
14 operations, and how operations change when machinery is deployed or customer  
15 mailing patterns shift. For example, in early 2000, as an operations manager in  
16 Minneapolis, we averaged one tray of outgoing Netflix mail per day. When I left  
17 Minneapolis, we were averaging more than one hundred trays per day. And that meant  
18 managing the same growth in return volume.

19           As a hands on manager, I have learned from my experience and that of my  
20 colleagues. Under the leadership of the Postmaster General and the Deputy  
21 Postmaster General, we have cut costs saving millions of workhours while improving  
22 efficiency and maintaining service to the American people. I can accordingly explain  
23 how and why local decisions are made in mail processing operations every day.  
24 Specific decisions may be prompted by reviewing available data and identifying where



1 operational improvement is needed. Sometimes change evolves through trial and error,  
2 while other change may derive from the benefit of a colleague's experience or a  
3 suggestion from a senior manager. I also interact with customers, who may bring some  
4 issue to my attention that, upon examination, can lead to an operational change.  
5 Issues, challenges, or concerns brought to our attention from any of these sources  
6 constitute opportunities. Typically, we work collectively through issues brought to our  
7 attention to determine whether some change is appropriate. Such is the nature of the  
8 work in operations. This process of analyzing and reacting to change can be used to  
9 explain the various ways in which DVD mail is processed today.

10 **2. Are you familiar with the mailing practices of companies that**  
11 **rent DVDs to their customers through the mail?**  
12

13 Yes, I am aware various DVD mailers utilize the Postal Service within their  
14 supply chain to provide transport of DVDs to and from their fulfillment and return  
15 centers. Both Netflix and GameFly have their corporate headquarters in California, so I  
16 have had interaction with representatives of both companies. It has been my  
17 experience that GameFly infrequently requests meetings with postal managers, even at  
18 the area office level, meeting with us once or twice a year. It is my understanding that  
19 GameFly manages their service requests through their Business Service Network  
20 (BSN) representatives. Netflix has requested meetings with area and local postal  
21 managers more frequently, which I expect may be related to the number of distribution  
22 centers they have around the country. It should be noted that both GameFly and Netflix  
23 have former Postal Service executives in their organizations and both take advantage of  
24 that postal talent and knowledge.  
25

1           **3. From a Postal Service operations perspective, please describe**  
2           **generally how DVD mail enters the postal system, both outbound**  
3           **from the DVD rental company to a customer and inbound from**  
4           **customer back to the DVD rental company, and how it is processed**  
5           **through the mail. Please explain any significant variations in**  
6           **patterns of mail processing that might arise and what effects such**  
7           **processing may have on the DVD mail.**

8  
9           Outbound DVDs, which may be letter shaped (Netflix, Blockbuster and other  
10          DVD mailers) or flat shaped (GameFly alone) are tendered to postal facilities at different  
11          levels of presort, such as 5-digit, 3-digit, SCF and Mixed (or residual) mail. Depending  
12          on the presort level of the handling unit (letter or flat tray), the contents may be sorted at  
13          origin to the destination facility, or the handling unit itself is transported to destination.  
14          The pieces are processed in the most efficient manner possible, based on shape, size,  
15          weight, mail class and mailer requests. Once mail arrives at the destination facility,  
16          specific steps include 3- and 5-digit destinating letter trays or to a lesser extent flats in  
17          flats trays (tubs) prepared by the mailer are then processed on automation equipment.  
18          For example, letter-shape DVDs are processed on letter-sorting equipment such as  
19          Delivery Barcode Sorters (DBCS) and merged with other letters in the delivery point  
20          sequence (DPS) environment. DPS is dispatched daily to the customer service  
21          operation for delivery (usually) by a letter carrier. Conversely, 3- and 5-digit destinating  
22          volume in flat tubs prepared by the mailer is processed on Automated Flat Sorting  
23          Machines (AFSM 100s) and merged with other flats into a carrier-route sort. Such  
24          volume is dispatched daily to the customer service operation for distribution mail clerks  
25          to disperse to letter carriers who then place flats into delivery sequence order for  
26          delivery. With the introduction of the Flats Sequencing Systems (FSS), flats can also be  
27          sorted via automation into delivery sequence order.

1 Return DVDs are mailed in an envelope provided by the DVD rental company;  
2 renters enter such pieces into the mail any way they choose, including blue collection  
3 boxes, delivery receptacles at the customer's residence or business, at a Post Office  
4 retail counter or collection chute, by giving it to a postal employee, or various other  
5 ways. Many inbound DVD mailpieces begin their return from the delivery unit that  
6 originally delivered the piece to the rental customer. Each inbound DVD mailpiece is  
7 taken to a processing center where it is sorted to a destination processing center by the  
8 most efficient method available. If sorted on automation equipment, any CONFIRM  
9 scans would be sent to the DVD rental company indicating a specific customer's DVD  
10 has begun its return trip.

11 When volume densities of a single DVD rental company's pieces warrant, postal  
12 employees may segregate all of that company's pieces (that are located—some are not  
13 found) in separate trays so they can avoid downstream handling. Segregation can  
14 begin as far upstream as the rental customer's delivery unit. Any segregated pieces are  
15 consolidated together, and travel on the same transportation as the rest of the mail.  
16 Upon arrival, mail processing operations simply sleeve the trays and route containers to  
17 a consolidated dispatch operation for mailer pickup through caller service. Some of the  
18 time, sleeved trays of segregated pieces must be transported to a subsequent mail  
19 processing facility for caller service pickup. Mailers who do not utilize caller service  
20 from a processing facility, receive return mail from Post Office customer service or  
21 delivery unit personnel. Some return pieces never get segregated, so those residual  
22 pieces (usually letter shaped) are processed with the rest of the First-Class Mail single  
23 piece mail, addressed below.

1 Each of the major DVD mailers uses different mailing envelopes and different  
2 types of tracking services through the CONFIRM program. Both Blockbuster and  
3 GameFly utilize Business Reply Mail for their return mailpieces, which requires an  
4 accounting step to assess postage due fees; while Netflix utilizes Permit Reply mail  
5 where return postage is prepaid and the postage due assessment step is not required.  
6 Consequently, it is not important to retain a count of the Netflix return pieces prepared  
7 for customer pickup. As trays of Netflix mail are filled at delivery units, they can be  
8 transported directly through the processing plant into the staging area for pickup without  
9 any intermediate handlings of any of the individual pieces. Likewise, at the plant, as  
10 trays of Netflix mail are filled, they can be dispatched to the staging area for pickup  
11 without any further postal handling and the associated cost of that handling. This also  
12 allows the mail to be available to the customer earlier in the day for pickup, which can  
13 help ensure satisfaction of Netflix' "one day" model of return processing by placing in  
14 that day's outgoing mailing a returned DVD being sent to a new user. While it may  
15 seem counterintuitive that isolating Netflix early in the collections process constitutes a  
16 cost savings, it is true that removing the significant volume those pieces represent from  
17 the cancellation operation improves efficiency in three ways. First, processing on the  
18 AFCS takes less time because less volume needs to be processed. Second, it also  
19 improves the efficiency of downstream operations such as clearance through the DBCS,  
20 which takes less time. Third it cuts down on jams DVD mail may cause. Because  
21 processing operations must generally be completed in smaller time windows in today's  
22 environment, these advantages have become more important than ever.

1           **4. Please describe the general nature of the First-Class Mail**  
2           **single-piece mailstream, including the flow of collection and drop-**  
3           **box mail from the lowest level through the postal system.**  
4

5           When a customer deposits a single piece of First-Class Mail into a collection box  
6 the following occurs. Volumes are extracted from a collection box by a Postal Service  
7 letter carrier, customer services (retail) operation or contract employee. The mail is  
8 prepped at the delivery unit in accordance with local mail preparation standard  
9 operating procedures. The various mail separations are consolidated for dispatch in a  
10 single vehicle to a centralized mail processing facility. There, upon arrival, consolidated  
11 volumes go through a "culling" unit where the individual containers are split and routed  
12 to down flow operations based upon mail type, class, shape and depth of sort. For  
13 letters, mixed volumes are routed through the dual pass rough cull and AFCS operation  
14 for identification and initial sortation. Subsequent sortation occurs on one of several  
15 mail processing equipment platforms depending on various factors including weight,  
16 shape, indicia and mail preparation (barcode/non-barcode, FIM, packaging). High  
17 density volumes for a single destination address (e.g., the local water utility's bill  
18 payments) can be placed into an individual handling unit such as a tray or tub, for  
19 operational purposes and then routed to subsequent consolidation and dispatching  
20 operations for transit.

21           Local mail generated from the automation equipment platforms mentioned above  
22 is subsequently processed to delivery point sequence, carrier route, or firm sort.  
23 Processed volumes are dispatched to local delivery units for delivery by a customer  
24 services retail associate, letter carrier or pickup by a customer.

25           Outbound mail is routed to a consolidated dispatch unit for transit to a

1 subsequent facility that performs delivery point sequence or other sorts as described  
2 above.

3 Flat volumes prepared from collection mail by the delivery unit in a flat tray are  
4 routed directly to an Automated Flat Sorting Machine (AFSM 100) for primary  
5 processing

6 Local mail separated by the AFSM 100, and destined for the same service area,  
7 is processed to a carrier route sort and dispatched to a local delivery unit for delivery.

8 Outbound mail, not destined for the service area, is routed to a consolidated dispatch  
9 unit for transport to a subsequent facility that performs a carrier route sort for pickup by  
10 a customer or is dispatched to local delivery units for delivery by a customer services  
11 retail associate, letter carrier or pickup by a customer.

12 Mixed volumes of flats, letters and small parcels are processed through the dual  
13 pass rough cull where flats are extracted for subsequent processing on the AFSM 100.

14 Challenges occur often, such as seasonal events. On those occasions, we  
15 institute procedures that help us maintain service levels during peak periods. Such  
16 procedures may alter handling of single piece First-Class Mail. One notable seasonal  
17 event was the recent 2010 Census mailing. Another example is elections, when mailed  
18 ballot materials may be isolated for future downstream or upstream handling. Tax  
19 season is another example where single piece First-Class Mail addressed to a single  
20 customer is separated from other mail as close to origin as possible. In such  
21 circumstances, the fewer number of times each mailpiece is touched generates greater  
22 overall efficiency for the operation.

1           **5. Are you familiar with respective DVD rental companies who**  
2           **send and receive DVDs as single piece First-Class Mail? Please**  
3           **identify all such companies and estimate the relative proportions of**  
4           **DVD mail that each represents.**

5  
6           Yes, I am familiar with a several DVD mailers, three of whom utilize the Postal  
7 Service within their supply chain. Here are the relative volumes we found.

- 8           • Netflix (>97%)           • Blockbuster (2%)           • GameFly (<1%)

9           **6. How is Netflix, Blockbuster, and GameFly mail processed in**  
10           **the field?**

11           Based on observation in processing facilities where I have worked, I have  
12  
13 observed mostly Netflix and a smaller number of Blockbuster envelopes in the mail; I  
14 have seen very few GameFly mailpieces or those of other DVD companies being  
15 processed anywhere. GameFly pieces are invisible, due to their relatively low volume  
16 and anonymous design. In San Diego, the low volume of GameFly mailpieces is  
17 insufficient to warrant assignment of a unique stacker or holdout for their flat shaped  
18 returns. The mailpieces are mixed in flat tray containers with other flat mailpieces  
19 destined for Los Angeles and then processed as previously described, and ultimately  
20 separated for delivery to GameFly. In other locations, especially ones closer to their  
21 processing centers, there may be enough volume to allow GameFly mailpieces to be  
22 captured and segregated from other Los Angeles flat mail. I understand that some  
23 nearby plants may assist the host plant by holding out Gamefly pieces, but only if the  
24 volume warrants it.

1           **7. GameFly mails at rates for two-ounce, First-Class Mail flats.**  
2           **By contrast, Netflix sends and prepays for DVD mail returned to it by**  
3           **its customers at the single-piece, one ounce rate for letters. Please**  
4           **describe any differences in handling and processing these two**  
5           **customers' mail.**

6  
7           Netflix pieces are processed in the letters mailstream, while GameFly's are  
8           processed and handled in the flats mailstream. On the outbound trip, such pieces  
9           would converge only with a carrier or in a delivery receptacle. On the return trip, both  
10          could appear together in collection mail and would be separated either by manual  
11          culling of Netflix pieces or by the AFCS. Once separated by manual culling or the  
12          AFCS, GameFly pieces would stay in the automated flats mailstream, while Netflix  
13          pieces would either get moved in trays or stay in the automated letters mailstream.  
14          Letters are processed using various types or generations of letter-sorting equipment  
15          and flats are sorted using flat sorters. Both letter and flat sorting systems process to the  
16          finest possible sort. Because GameFly's pieces are returned as postage due, they must  
17          undergo a procedure to account for the postage due fees before the pieces are  
18          released to GameFly. Netflix pieces, if culled, would be tendered via caller service in  
19          sleeved trays; if processed through the DBCS, pieces would be containerized in the  
20          same way and tendered at the same caller service location.

21           **8. Please explain why a particular mailer might choose to use a**  
22           **First-Class Mail flat, as opposed to a First-Class Mail letter.**

23  
24          According to the Domestic Mail Manual, the physical characteristics of the piece  
25          may require that the piece be mailed as a flat. The physical dimensions of length (more  
26          than 11.5 inches long), width (more than 6 1/8 inches tall), thickness (more than ¼ inch  
27          thick) and weight (more than 3.3 ounces) mean that a piece would not qualify as a  
28          letter. Other physical characteristics such as rigidity and uniform thickness play a part



1 in determining the processing category of a mailpiece.

2           Beyond these dimensional requirements, the business needs of the mailer would  
3 drive the class and shape. A Periodicals mailer, or Standard Mail direct marketer, who  
4 chooses a flat versus a letter would do so to target its customer, or to meet customer  
5 expectations. Postage prices, which are also driven by shape, can influence mailers'  
6 decisions since letters cost less. A commercial mailer may be aware of differences in  
7 automation technology used by the Postal Service to process letter versus flat mail, and  
8 choose one or the other accordingly. GameFly makes this claim, asserting that it avoids  
9 damage to its mailpiece contents by using flats. Yet GameFly has never used letter  
10 shaped pieces for its DVDs, and I understand its breakage rate is quite similar to Netflix'  
11 breakage rate. So whatever else is true, GameFly has always chosen flats for its  
12 business model, a choice that any mailer is free to make as one strategy in a business  
13 where some breakage in the mail is routinely incurred.

14           From a practical standpoint and to the best of my knowledge, most DVDs are  
15 currently mailed as letters. And many are easily recognizable as mailpieces containing  
16 DVDs. I also understand loss prevention is an issue for some DVD mailers, which is  
17 why a DVD mailer might choose to "hide in plain sight" and opt for a less visible or  
18 conspicuous mailpiece. A less conspicuous mailpiece that adds cardboard to protect  
19 the contents in the somewhat less rigorous path through flats automation could well  
20 explain use of a flat rather than a letter for mailing DVDs.

1 **9. What factors or criteria determine how DVD return mail is**  
2 **processed, including possible culling and manual or machine**  
3 **processing? Do managers at the local level evaluate DVD return mail**  
4 **involving particular mailers to determine what processing it**  
5 **receives?**  
6

7 What is relevant for DVD mailers is relevant for all mailers. Earlier in my  
8 testimony, I referenced a Census mailing, tax returns and voter ballots as examples  
9 where culling at the initial collection point may add to operating efficiencies. When  
10 significant volume for a particular addressee is identified in the collection volumes from  
11 delivery units, carriers or collection operations, the possibility of prepping it into a letter  
12 tray or flat tray (tub) arises. Doing so helps avoid downstream handling costs by  
13 processing facilities, since the containerized returns can be dispatched directly to the  
14 destination delivery point. The Postal Service acknowledges that service requests  
15 made by mailers can also influence local decisions, particularly for local mailers. The  
16 Postal Service need to optimize processing efficiency extends to ensuring that  
17 automation technology operates at expected rates of throughput to meet operational  
18 goals. In general, mailpiece shape and weight dictates most operational decisions. As  
19 an example, Blockbuster's mail is prepared as letters which are then processed within  
20 the letter automation environment, while GameFly's volume is prepared and usually  
21 processed within the flats automated environment.

22 It is quite possible that mail, which appears to be identical, can be handled in  
23 different ways. Let me provide an example. In my service area, a mailer uses flat rate  
24 boxes to ship its product. Flat rate boxes are typically processed on our automated  
25 parcel sorters. In this instance, the product is extremely dense with the result that  
26 packages can each weigh more than 40 pounds. Because of this weight, we have

1 worked with the mailer to ensure the packages are prepared and presented for mailing  
2 under specific time and place conditions so that it cannot be confused with other, similar  
3 appearing flat rate boxes. Through these mailer specific guidelines, we are able to  
4 isolate the packages for processing in the most efficient manner; and thereby also  
5 ensure the safety of our employees who are not surprised by the weight and are  
6 accordingly better prepared to handle these pieces prior to lifting. While on the surface,  
7 the flat rate boxes appear identical, the contents require very different handling.  
8 Without such tailored operating procedures, we risk the safety and health of our  
9 employees, and also damage to mail processing equipment.

10 **10. Please assess the relative importance of these factors:**  
11 **(1) Volume; (2) Visibility; (3) Physical mailpiece characteristics.**

12  
13 Any or all three of these attributes can lead to the identification and possible  
14 separation from an automation mailstream of similar high volume mail. Visual cues are  
15 used by employees while mechanical separation (by automation) enables, for example,  
16 separation of flats and letters at the AFCS. Volume and visibility are likely the most  
17 important factors enabling separation of like pieces for direct dispatch. When a  
18 mailpiece is easily identifiable in significant volume, removing mailpieces from the  
19 collection mailstream and subsequent cancellation operations reduces downstream  
20 handling that otherwise would require multiple processing (automation and non-  
21 automation) steps. When more groups of similar mail are captured and extracted from  
22 other mail volume the overall clearing of all mail can often be completed sooner. As  
23 mentioned above with the flat rate box example, sometimes the physical characteristics  
24 of mailpieces encourage a nonstandard type of handling that is more effective and  
25 efficient.

1           **11. In making decisions affecting processing of DVDs, are local**  
2           **managers influenced by the identities of particular mailers or**  
3           **recipients?**  
4

5           As witness Seanor explains, we encourage input from customers, and joint  
6 attention to detail can lead to efficiency gains for both the mailer and the Postal Service.  
7 But the identity of a mailer itself does not play a role. Postal operations personnel are  
8 well aware first of all that operational imperatives can and must drive decisions, and  
9 that's exactly what has been happening in the last few years as immense costs have  
10 been eliminated from mail processing. Second of all, operations personnel are quite  
11 aware of the need to treat customers fairly. We hope that this case provides a lesson  
12 that is driven home to the rest of the mailing community; we collaborate extensively in  
13 making decisions, and there can be a lot of give and take in that process which, taken  
14 out of context, may at first blush look a little odd. But in the end, we make decisions in  
15 operations for the reasons that improve our business performance.

16           **12. How do DVDs get damaged in the mailstream?**

17           How DVDs get damaged, whether in mail processing or in handling at either end  
18 of a trip through the mail, is not always evident because of the nature of DVDs and how  
19 they are packaged. While I understand that older Postal Service Engineering tests  
20 found damage occurring in letter automation equipment, both DVDs themselves and  
21 how mail processing equipment is set up and maintained have continued to evolve  
22 since that testing took place. Witness Lundahl explains that DVD manufacture can  
23 decrease the likelihood of damage; Netflix has used this information to create more  
24 flexible, less brittle DVDs for its own mailing. Witness Lundahl also explains how  
25 attention to processing equipment can help to minimize breakage. Since DVD mailers

1 have their own processing equipment in addition to what the Postal Service uses to  
2 process DVDs, both mailers and the Postal Service are in positions to capitalize upon  
3 that knowledge and drive down DVD damage even more. But for more detail about how  
4 DVDs get damaged, I defer to Mr. Lundahl who has studied this topic from an  
5 engineering perspective.

6 The facts of this case also illustrate how DVD damage is something of a moving  
7 target. Over time, successive GameFly mailpiece designs have helped diminish  
8 breakage (and theft), while Netflix experience also shows diminishing breakage over  
9 time. GameFly uses a heavier mailpiece that provides additional protection to a DVD  
10 compared to other DVD mailers; GameFly also uses flats automation, which, as noted,  
11 can be gentler to DVDs than letter processing. Yet despite quite different business  
12 models, both GameFly and Netflix today report quite similar overall breakage rates. So  
13 we know that damage can be impacted by the physical characteristics of the DVD, how  
14 DVDs are packaged (material, design, thickness, rigidity, and size), processing path and  
15 number of times processed; but I leave to Mr. Lundahl any more specific explanations of  
16 how DVD mail can be damaged during processing.

17 **13. Are you aware of any other ways that DVDs can be damaged**  
18 **other than during machine processing?**

19 Yes. The one national point of guidance for DVD processing focused upon  
20 minimizing damage that occurred when trays or tubs of DVDs were stacked improperly,  
21 essentially by crushing DVDs at the bottom. More specifically, stacked flat trays (tubs)  
22 of DVDs must not nest within one another without lids or sleeves. For that matter,  
23 DVDs are handled by humans outside the mailstream, which necessarily implies that  
24 some breakage occurs accidentally. I also understand that DVD breakage can be  
25

1 cumulative; a modest flaw that still permits a DVD to play can increase the potential for  
2 automated processing to worsen that damage. DVD mailers clearly understand that  
3 breakage during transport from company to customer, and back from customer to  
4 company is possible such that today some breakage is a cost of doing business.  
5 Please refer to the testimony of Rob Lundahl, USPS-T-4, for more specific information.

6 **14. To what extent do local managers factor the potential for**  
7 **breakage of the DVDs into a determination of whether to provide**  
8 **manual processing of return mail?**  
9

10 Managers do not factor the potential for DVD damage into processing decisions  
11 for the simple reason that their actions cannot have much impact upon breakage, which  
12 occurs regardless of how DVDs are processed and which is usually not visible from the  
13 outside of a mailpiece. Managers' primary focus is on efficient clearance of all available  
14 mail in the current processing window. Managers may consider the potential for DVD  
15 mail to cause machine jams, which delays processing of mail. But to my understanding  
16 jams do not necessarily equate to breakage.

17 More generally, Postal Service packaging requirements go a long way to  
18 elimination of damage incurred during mail processing. Nonetheless, insurance is  
19 available for mailers who want protection for mailpiece content, with the availability of  
20 insurance dependent upon the quality of the packaging. Yet postal officials care a great  
21 deal about avoiding damage to any mail for the simple reason that customers do not like  
22 breakage, whether they are mailers or recipients. Consequently, local managers will  
23 factor damage potential and safety into their general decisions about how to process  
24 mail, as exemplified above in the discussion about heavy weight flat rate boxes. Mail  
25 processing personnel necessarily build up experience with mailpieces of many types.

1 Managers also pay attention if they are made aware that excess breakage is occurring  
2 locally, but their focus would be upon eliminating the anomaly, not changing how DVD  
3 mail is processed.

4 The Postal Service does not routinely track damage to mail that it is unable to  
5 observe unless mailers/recipients report that information. A facility can report an  
6 irregularity in the Electronic Mail Improvement Reporting (eMIR) system. Any mailpiece  
7 that is regularly causing damage is identified and entered into the eMIRs application for  
8 action and resolution by responsible parties (both postal personnel and mailers are  
9 notified). Further examples of issues that may be recorded include Periodical and  
10 Standard Mail flat bundles that have poor strapping, which can lead to bundle breakage.  
11 Poorly prepared bundles can separate and burst open at the point of induction, causing  
12 damage and delay of mail service. Postal generated reports often relate to mail  
13 preparation and mail makeup irregularities. But reports of DVD mail damage are difficult  
14 to associate with the multiple automated mail systems described above, including the  
15 Dual Pass Rough Cull, AFCS, DBCS, and AFSM machines. Generally, the Postal  
16 Service, and more specifically plant personnel, would be unaware of damage issues  
17 unless identified by the recipient or mailers. Postal employees, of course, are not  
18 allowed to open processed mail, look for and act upon damage found.

19 **15. In mail processing decisions, what is the role of damage to**  
20 **mail versus damage to machines and disruption of operations (delay,**  
21 **maintenance costs, etc.)?**  
22

23 All of these factors are considered together when making mail processing  
24 decisions. However, as explained above, damage to DVD mail is typically not visible  
25 which makes it difficult to account for. Witness Lundahl's testimony, USPS-T-4, does

1 touch on types of maintenance that can help avoid damage to DVD mail. But  
2 maintenance of mail processing equipment is important to machine up time, so  
3 maintenance is scheduled and performed regularly. Management's primary  
4 responsibility is to sustain efficient processing of the mail by maintaining machine  
5 performance while minimizing damage to the mail; this is why it is imperative to have  
6 physical mailpiece characteristics match that of automation capabilities, particularly  
7 when a mailer is claiming automation prices. The sometimes awkward fit between mail  
8 processing equipment designed before DVDs existed lies, in one sense, at the heart of  
9 this docket. Discussion among personnel regarding what, if anything, to do that would  
10 improve the fit between DVD mail and processing equipment was a matter of active,  
11 ongoing debate, as GameFly's direct case documents. Newer mail processing  
12 equipment, such as the AFCS 200 better accommodates DVD mail.

13 **16. Do you notice a consistent amount of breakage among DVD**  
14 **mail processed on automated letter machines, regardless of the type**  
15 **of DVD (video v. game) or mailpiece?**  
16

17 As previously noted, damage to DVD mail is difficult to discern. Information from  
18 customers (especially Netflix) shows some breakage, but it is minimal and a known cost  
19 of using the mail to conduct a DVD rental business. I understand, based on reports  
20 provided by Netflix and the information provided during a recent Postal Forum meeting  
21 with Gamefly that the breakage rates are comparable. If excessive breakage is  
22 identified, we do try to identify the source and eliminate any problem identified.

23 **17.. Are mailers aware that DVD damage can occur in mail**  
24 **processing?**  
25

26 Yes, I would say that low damage rates are common knowledge. Rates around  
27 one percent have been reported recently by Netflix, and more recently by GameFly. As



1 such, it is a known cost of doing business through the mail, at least given the packaging  
2 DVD round trip mailers use. More elaborate and protective packaging should be able to  
3 eliminate breakage altogether, although postage would likely increase. I am informed  
4 that Postal Service Engineering developed packaging for DVDs transported through the  
5 mail, but for what I expect are their own good business reasons, no mailer is currently  
6 using that option.

7 **18. What role does theft play in mailer decisions to mail DVDs?**

8  
9 Mailers choose to use the mail, or not, for their own business reasons. Theft of  
10 mail has long been recognized by the law, which is why criminal sanctions for theft have  
11 been on the books for centuries. Mailers must make business decisions based on their  
12 particular needs. I am informed that GameFly changed its mailing envelope to one that  
13 is not distinctive after being informed that its previous envelope was being targeted by  
14 thieves. I also understand that GameFly's theft rate is higher than its breakage rate. So  
15 one can conclude that GameFly is aware of theft, howsoever that fits into its business  
16 decisions. I do know that the mailers identified in this particular case have provided  
17 updates to the Postal Service regarding this issue through their loss prevention  
18 representatives during Postal Forums meetings, Service Request Activity Detail reports  
19 filed with their Business Service Network representative or via direct communication  
20 with a particular facility. If the customer is experiencing high loss in a particular area  
21 generally the mailer will involve the Inspection Service or Office of Inspector General  
22 special agents for assistance.

1 **19. What role does theft prevention play in local mail processing**  
2 **decisions?**  
3

4 None. Processing of DVDs does not vary because DVDs—and everything else  
5 in the mail—can conceivably be stolen. Anti-theft measures such as Inspection Service  
6 line of sight cameras or lookout galleries, restricted security access to facilities,  
7 background checks of all postal employees, and a zero-tolerance policy for pilfering are  
8 in place throughout every operation in every postal facility. Employees are aware that  
9 theft of mail is grounds for removal from the Postal Service and other possible legal  
10 ramifications.

11 **20. What, if any, role has theft played in processing decisions**  
12 **involving Netflix, Blockbuster, GameFly mail?**  
13

14 In an effort to reduce loss (and breakage) during transport, I am aware Netflix  
15 requested that their product be sleeved by the return facilities prior to dispatch, although  
16 this was not a recent request. Theft may occur from within the Postal Service but also  
17 by mailers' contractors and personnel. However I understand that GameFly chose to  
18 make its DVD package less conspicuous in an effort to reduce theft and encourage  
19 automated processing (thereby avoiding manual handling) of their mailpieces; with the  
20 belief and anticipation that less manual handling of their mailpieces would help curb  
21 identification of the envelope as containing gaming discs.

22 **21. What actions can a DVD mailer take to reduce theft?**  
23

24 DVD mailers can and do provide any information that assists in identifying the  
25 point of loss, such as IMb or CONFIRM tracking information, to postal management, the  
26 Inspection Service or the Office of the Inspector General.  
27  
28

SUPPLEMENTAL TESTIMONY

1  
2  
3 **22. Since the Postal Service filed your direct testimony, have you had an**  
4 **opportunity to review GameFly's testimony in its interrogatory responses**  
5 **and in the cross-examination of its CEO, Mr. Hodess?**

6  
7 Yes.

8  
9 **23. In light of that testimony, do you have anything to add?**

10 As part of my review of the July 28 hearing transcript and GameFly's  
11  
12 interrogatory responses, I considered Mr. Hodess' discussion when questioned by  
13 Postal Service counsel about GameFly's contention that the Postal Service had denied  
14 manual processing for GameFly's discs, or had refused to provide treatment similar to  
15 that provided to Netflix. Tr. V/893-897, 930-940. Particularly in light of Mr. Hodess'  
16 inability to cite specific events or individuals who were consulted, I could not find any  
17 evidence to support this allegation in Mr. Hodess' responses or related GameFly  
18 responses to discovery requests. Based on my experience, I believe that no denial of  
19 manual processing occurred. In response to any request for manual handling by  
20 GameFly, a local manager should have explained the Postal Service operations  
21 approach of allowing local managers discretion to process mail using the most efficient  
22 method, according to particular local circumstances. This practice recognizes that the  
23 mail of each individual mailer, including Netflix, will not necessarily receive the same  
24 processing at every location. Accordingly, a refusal to commit to a national policy of  
25 manual processing is not a denial of manual processing; any mailer who seeks manual  
26 processing nationally must deal individually with each local processing facility.  
27 In this regard, my general conclusion that GameFly has not been denied manual  
28 processing is supported by reference in Mr. Hodess' cross-examination to processing of

1 GameFly mail in at least one location in South Florida. Counsel asked Mr. Hodess if he  
2 was aware of the manual processing of GameFly mailpieces in that area, and Mr.  
3 Hodess replied that he was not.

4 Because this practice is not one which has been employed by the plants where I  
5 have worked, I contacted the Plant Manager; Manager, In Plant Support; and Senior  
6 Operations Support Specialist for the Fort Lauderdale plant where this practice had  
7 been observed. I asked them questions about how disc mailers are handled in  
8 collection operations at delivery units during the 010 operation at the plants, and how  
9 pieces are dispatched to their destination.

10 To summarize our discussion, the Fort Lauderdale staff said that most disc mail  
11 is culled when and where it is identified. This could happen in collection operations in a  
12 delivery unit where the disc mail is segregated from other mail and dispatched in a  
13 separate container to the plant, or the culling could occur at the plant. The staff said  
14 that the process is not a result of a SOP, but has evolved over time, in part because of a  
15 unique equipment configuration at the location. An extended culling belt was attached  
16 to the Loose Mail Distribution System for an unrelated reason. The extended belt  
17 allows more opportunity for disc mailpieces to be identified and removed.

18 This process was developed independently by delivery and plant personnel in an  
19 effort to improve the local operations. The staff explained that the same process  
20 applies to all disc mailers. According to the local managers, the disc mail is culled  
21 principally to reduce jams and damage to mail or equipment, and generally to enhance  
22 the effectiveness and efficiency of local operations. The local managers also added  
23 that the endorsement on the GameFly pieces to process on the flat sorting machine was

1 another motivation to cull the pieces. Once culled, the pieces for each company are  
2 separated, placed in a tray or tub and dispatched for delivery, either to the Fort  
3 Lauderdale caller service section or for transportation to other locations. It should be  
4 noted that if there is insufficient volume for an individual company to fill a tray or tub, the  
5 pieces are placed in a tray or tub with other mail already prepared for the intended  
6 destination. Mail remains segregated only if the volume warrants it.

7 In my opinion, this is an example where observant managers have responded to  
8 local conditions by developing a process that expedites the handling of the disc mail  
9 flowing through the mail at their location. These processes may be in place in other  
10 locations with similar situations. They would not necessarily be in place in locations  
11 where operating conditions are different.

12 My overall conclusion is that GameFly's contention that it has been "denied"  
13 manual processing, or that, in effect, it has been forced to choose a particular mode and  
14 classification of mailing because it has not been "offered" manual processing, is no  
15 more than an unfounded inference drawn by GameFly in order to be able to make its  
16 legal arguments in this complaint. While I do not comment on any of the legal aspects  
17 of its argument, I can conclude that its factual assertions are not supported by the  
18 minimal information that it has been able to offer, and that, based on my experience as  
19 an operations manager at more than one location, GameFly presents an inaccurate  
20 representation of the facts.

21  
22  
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27

1 CONCLUSION

2 The Postal Service faces a challenging mail processing environment that  
3 requires active oversight and rapid response to changing conditions in every plant. Its  
4 decisions regarding the processing of respective mailers' DVD mailpieces are driven by,  
5 and consistent with, its efforts to maintain an efficient system of collection, sorting, and  
6 delivery of the mail nationwide. The Postal Regulatory Commission should accordingly  
7 conclude that Postal Service processing of DVD mail is prudent and consistent with the  
8 mandate to provide an efficient system for the processing of mail, and that no undue  
9 discrimination can be found in how it handles, and how it decides to handle, DVD  
10 mailpieces entered as First-Class Mail.

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