

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Complaint of GameFly, Inc.

Docket No. C2009-1

PRESIDING OFFICER'S RULING  
ESTABLISHING PROCEDURAL SCHEDULE

(July 30, 2009)

During the prehearing conference held on July 23, 2009, in accordance with Order No. 235, the Complainant GameFly, Inc. (GameFly) and the Postal Service expressed their intention to engage in discovery pursuant to a stipulated schedule.<sup>1</sup>

To that end, the parties propose a schedule that permits discovery through September 3, 2009, addresses follow-up discovery, and calls for GameFly to file its direct testimony by October 1, 2009. Tr. 1/7-9.

The proposed schedule is qualified in two respects. First, the two cutoff dates are subject to adjustment if GameFly, despite diligently pursuing discovery, has insufficient time to prepare its case-in-chief. GameFly indicates that this caveat is a hedge against the possibility responses to its discovery requests are delayed for reasons beyond its control. *Id.* at 8.

The second caveat concerns follow-up discovery. Follow-up interrogatories may be filed after the initial discovery period ends, ordinarily within 7 days of receipt of the

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<sup>1</sup> See PRC Order No. 235, Order Denying Motion of United States Postal Service For Partial Dismissal of Complaint and Notice of Formal Proceedings, July 1, 2009, at 6.

response. See 39 CFR § 3001.26(a). The Postal Service has agreed to waive that requirement, but not the right to object on substantive grounds. *Id.* at 9.

The parties' joint efforts to reach an agreement on discovery are appreciated. The stipulated discovery schedule proposed by the parties is reasonable and is adopted. The parties are urged to initiate discovery promptly and not defer it to the end of the discovery period.<sup>2</sup>

The schedule adopted affords parties an opportunity to complete discovery and for GameFly to prepare its case. It is the Commission's intent to move this proceeding forward as expeditiously as practicable. Thus, modifications of the schedule will be granted only for good cause shown.

Additional procedural dates will be established in a subsequent ruling.

#### RULING

1. Discovery on the Postal Service ends September 3, 2009.
2. Follow-up discovery is permitted.
3. GameFly's direct testimony is due October 1, 2009.

Dan Blair  
Presiding Officer

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<sup>2</sup> While answers to discovery are usually due within 14 days, those on whom discovery is served are urged to provide answers as soon as practicable. .