

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

COMPLAINT OF GAMEFLY, INC.

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Docket No. C2009-1

MOTION OF THE UNITED STATES POSTAL SERVICE  
FOR EXTENSION OF TIME IN WHICH TO REPLY TO  
THE MOTION OF GAMEFLY, INC. TO UNSEAL CERTAIN  
DOCUMENTS PRODUCED IN DISCOVERY  
(October 2, 2009)

On September 25, 2009, GameFly, Inc. filed a motion requesting that the Commission “issue an order directing interested parties to show cause” why a subset of documents that have been produced by the Postal Service in discovery under protective conditions should be considered nonpublic when they are actually filed with the Commission by GameFly as part of its direct case. See Motion of GameFly, Inc. for Order Directing Interested Parties to Show Cause Why Certain Documents and Information Designated as Proprietary by the Postal Service Should Not be Unsealed at 1. This motion requests the issuance of a Commission order, to which the Postal Service and other interested parties would then respond. Id. at 18. However, the Commission’s new confidentiality rules appear to contemplate that no such show cause order will be issued, and that interested parties are obligated to file a response justifying the confidentiality of documents they have designated as confidential within seven days of a request that those documents be unsealed, unless a longer period is specified. See 39 C.F.R. 3007.31(b).

The Postal Service respectfully requests that additional time be accorded to respond to GameFly's motion, pursuant to 39 C.F.R. 3007.31. GameFly sets forth a lengthy discussion of why these documents should not be considered confidential, arguments that affect not only the interests of the Postal Service, but of specific Postal Service customers. The Postal Service has been unable to turn its attention to the arguments presented by GameFly, for the simple fact that Postal Service resources dedicated to this proceeding have been focused on responding to the large number of discovery requests that have been filed by GameFly. Since this focus on responding to discovery requests is likely to be ongoing, the Postal Service requests that the Commission give the Postal Service until October 19, 2009, to file a pleading discussing the confidentiality of these documents. This will allow the Commission to enjoy the benefits of a full and complete discussion of these important issues prior to issuing any decision regarding the confidentiality of these materials (which will, in turn, naturally implicate not only these materials, but all additional materials produced in discovery that GameFly may wish to file publicly as part of its direct case).<sup>1</sup>

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.

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<sup>1</sup> In this regard, the Postal Service would not be opposed to allowing GameFly an opportunity to respond, as GameFly requests in its motions. Because these documents have never been filed with the Commission, but have instead simply been produced pursuant to discovery between the parties, the Postal Service has not been obligated to file an application for nonpublic treatment of these documents pursuant to 39 C.F.R. 3007.21.

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