

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

**COMPLAINT OF GAMEFLY, INC**

**Docket No. C2009-1**

**RESPONSE OF NETFLIX  
TO COMMENTS  
OF GAMEFLY, INC,  
IN RESPONSE TO  
PRESIDING OFFICER'S RULING No. C2009-1/12**

On December 9, 2009, GameFly, Inc (GameFly) responded to POR-12 regarding the standards and procedures proposed by the Presiding Officer for determining the extent to which documents filed under seal in the above-captioned case should be unsealed. Netflix is not a party to this proceeding and does not choose to become involved in the rather complex issues involved in the POR-12 ruling. However, it must take exception to the comments made by GameFly against Netflix in its response.

GameFly implies that Netflix is a "putative" beneficiary of continued secrecy in this proceeding (Comments of GameFly, Inc, p.1), when GameFly knows full well that Netflix has never opposed the unsealing of any materials in this proceeding, and has never argued that their publication would result in injury to Netflix. GameFly refers to the "objections of the Postal Service, Blockbuster and Netflix to public unsealing of the documents as identified in GameFly's September 25 Motion...." Id. At 2. Netflix has never filed any objection to unsealing documents, has never requested that documents be sealed, and GameFly well knows this to be the truth.

GameFly itself seems to concede that Netflix has not sought to block any unsealing, while at the same time implying that the failure of Netflix to make a showing of competitive injury, despite the fact that it has never made any such claim and is not a party to this proceeding, somehow supports GameFly's conspiracy theory that the beneficiaries of this "favored" handling have been conspiring with the Postal Service. (Id. at 9, fn. 1).

For example, GameFly argues that "... the Commission must draw appropriate inferences from the failure of proof by the Postal Service, Netflix and Blockbuster, despite ample notice and opportunity to be heard." (Id. At 7). It is not clear to us just

what inference can possibly be drawn from the fact that Netflix, which is not a party to this proceeding, has failed to prove “something” not specifically identified.

This is all part of GameFly’s broader strategy which is to try to convince the Commission, through its various pleadings, unsupported by any direct evidence, that the supposed beneficiaries of the Postal Service’s discriminatory treatment, Blockbuster and Netflix, are all part of a plot to injure smaller mailers, including GameFly. That refrain has been repeated throughout GameFly’s pleadings.

To state what should have been obvious, particularly to GameFly, Netflix has never had any interest in concealing any information about its use of the Postal Service, has never participated in any conspiracy to favor some large mailers to the disadvantage of smaller mailers, and has never opposed treatment for GameFly similar to that accorded to Blockbuster and Netflix. In short, Netflix is unaware of any such plot or conspiracy, and there is simply no evidence, other than the fact that the Postal Service, for its own reasons, objects to the publication of certain information, and that on one occasion, so did Blockbuster.

It is not within Netflix’s power to compel the Postal Service to divulge information in its files; and Netflix certainly has not caused these nondisclosures; and, based upon GameFly’s pleadings, believes that this is simply an attempt by GameFly to try and prove its case through unsupported assertions in filing after filing, devoid of any substantive direct evidence.

Respectfully submitted,

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Dated this 17<sup>th</sup> day of December, 2009