

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

COMPLAINT OF GAMEFLY, INC.

)  
)  
)

Docket No. C2009-1

**MOTION OF GAMEFLY, INC., FOR LEAVE TO FILE  
REPLY TO “RESPONSE” OF NETFLIX TO GAMEFLY COMMENTS  
ON PRESIDING OFFICER’S RULING NO. C2009-1/12  
(December 23, 2009)**

Pursuant to Rule 3001.21(b), GameFly, Inc, (“GameFly”) respectfully requests leave to file a two-page Reply to the December 17 Response of Netflix to GameFly’s December 9 Comments on POR-12. Although the Commission’s rules do not authorize a reply to a response as a matter of right, Rule 3001.21(b) allows the Commission or presiding officer to accept such a pleading as a matter of discretion in appropriate cases.<sup>1</sup> Good cause exists for allowing GameFly to file such a response here.

Netflix’s December 17 pleading does not address the issues on which the Presiding Officer’s Ruling has sought comment—i.e., the standards for determining whether particular documents filed under seal should stay under seal. On these issues, Netflix “does not choose to become involved.” Netflix

---

<sup>1</sup> See , e.g., Presiding Officer’s Ruling No. MC2004-3/2 at 5 n. 17 (granting Bank One motion for leave to file reply to reply); Presiding Officer’s Ruling No. R2001-1/20 at 6 n. 9 (granting OCA request for leave to file reply to reply); Presiding Officer’s Ruling No. R97-1/20 at 10 ¶ 6 (granting motion of Nashua Photo Inc. *et al.* for leave to file reply to reply); Presiding Officer’s Ruling No. MC96-3/13 at 6 n. 3 (same).

Response at 1. Instead, Netflix uses its response to rebut, *inter alia*, what it contends are false allegations by GameFly that Netflix has tried to block the unsealing of any documents in this case.

This concern appears to arise from a misreading of GameFly's position. Accordingly, the simplest and best course is to allow GameFly to make its position unambiguously clear.

For the foregoing reasons, GameFly respectfully requests that the Commission accept GameFly's Reply to the December 17 Response of Netflix to GameFly's December 9 Comments on POR-12

Respectfully submitted,

David M. Levy  
Matthew D. Field  
Alex Megaris  
VENABLE LLP  
575 7<sup>th</sup> Street, N.W.  
Washington, DC 20004  
(202) 344-4800

*Counsel for GameFly, Inc.*

December 23, 2009