

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

COMPLAINT OF GAMEFLY, INC.

Docket No. C2009-1

**THE UNITED STATES POSTAL SERVICE RESPONSE TO MOTION OF
GAMEFLY, INC., FOR SCHEDULING CONFERENCE**
(April 21, 2010)

On April 14, 2010, GameFly, Inc. (“GameFly”) filed a motion requesting that the Commission schedule a conference to set deadlines for the Postal Service’s discovery of GameFly and the filing of the Postal Service’s case.¹ In addition, the Motion alleges that the Postal Service has failed to produce emails responsive to GameFly’s discovery requests, and requests “that the conference agenda include a discussion of appropriate remedies.” The Postal Service consents to GameFly’s request for a scheduling conference to set deadlines, provided that the Postal Service is allowed at least two weeks to prepare for the conference. The Postal Service will need this preparation time because the attorneys involved with this docket are working on other pressing matters, including N2010-1, PI2010-1 and the “A” series dockets, and determining how much time the Postal Service will need to conduct discovery and file its own case will require cross-functional coordination. The Postal Service opposes the Motion to the extent it requests a conference to consider issues other than the setting of deadlines as described above.

It is reasonable to allow the Postal Service two weeks to conduct the necessary consultation to prepare for the scheduling conference. This matter involves complex

¹ See Motion of GameFly, Inc. for Scheduling Conference, April 14, 2010. All citations in this document are to filings in PRC Docket No. C2009-1, unless otherwise noted.

issues and a significant amount of information, as evidenced by the almost one-year period between the filing of GameFly's complaint and its direct case, as well as the more than seven hundred interrogatories (including subparts) filed by GameFly. A two-week preparation period will allow the Postal Service to offer more accurate estimates of the time it will need to conduct discovery and develop its case.

The Postal Service respectfully requests that the Commission deny GameFly's Motion as it relates to subjects other than the establishment of deadlines for the Postal Service's discovery of GameFly and the filing of its case. This matter has already consumed valuable resources of the Commission and the Postal Service, and it is in the interest of all parties to narrow the scope of the conference to essential matters. The allegations and references to "remedies" raised by GameFly do not warrant the Commission's valuable time and resources. The circumstances provide essentially no expectation that email will show anything beyond GameFly's existing direct case, and discussion of any "remedies" presumes some undetermined other outcome. GameFly and the Postal Service have collaborated in developing manageable search terms to apply to Postal Service emails², but unfortunately many of the proposed searches have proven unworkable. Specifically, the proposed searches could not be translated into the syntax of the available search tool and the overly broad search strings elicited too many supposedly responsive emails. Moreover, GameFly is already in possession of a significant amount of email preserved using more direct methods of identifying responsive material. Delay has arisen from an inherent difficulty in finding effective

² Most recently, on April 15-16, 2010 counsel for the Postal Service and GameFly exchanged emails addressing revisions to search terms.

search terms³ that elicited material more useful than what has already been provided, and not from misconduct by either party.

The Postal Service respectfully requests that the Commission schedule a conference to occur no earlier than May 5, 2010, and that discussion in the conference be limited to the establishment of deadlines for the Postal Service's discovery against GameFly and possible dates for hearings on that case. The Postal Service is exploring the potential parameters of its own direct case, and it appears likely it will have one to file.

Respectfully submitted,

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³ See generally Lon A. Berk, Some Logical Limits of E-Discovery, 12 SMU SCI. & TECH. L. REV. 1 (2008) (discussing inherent difficulty of conducting effective search of electronically stored information).