

PRESIDING OFFICER'S
RULING NO. C2009-1/20

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

(Issued May 7, 2010)

At a scheduling conference held on May 5, 2010, the parties discussed several outstanding issues regarding e-mails sought by GameFly, Inc. (GameFly) through prior discovery requests. The parties also presented their views concerning the establishment of a procedural schedule. Since the scheduling conference, GameFly and the Postal Service have filed notices indicating that the e-mail issue has been resolved.¹ Accordingly, the only matter now before the Presiding Officer involves the establishment of a procedural schedule.

Upon consideration of the views presented at the prehearing conference and in recognition of the need to resolve the issues presented in this case in a timely manner, I am establishing the following procedural schedule.

¹ Notice of GameFly, Inc., of Resolution of Discovery Issue, May 6, 2010; and Notice of the United States Postal Service Regarding Discovery Issue, May 6, 2010.

Discovery of the GameFly case. GameFly filed its direct case on April 12, 2010. On May 4, 2010, the Postal Service served its first round of discovery requests on GameFly.² At the scheduling conference, the Postal Service requested six weeks to conduct its discovery of GameFly's case. (Tr. 2 at 38). GameFly opposed this request as excessive. (Tr. 2 at 39-41). On consideration of the arguments of counsel and in light of the fact that this proceeding has been pending for some time, I believe that it is appropriate to establish a discovery deadline of May 26, 2010, which is approximately three weeks from today, as the deadline for the Postal Service to serve its discovery requests. In setting this deadline, I would note that the Postal Service received GameFly's direct case on or about April 12, 2010, and that by the May 26, 2010 discovery deadline, the Postal Service will have had over six weeks to pursue discovery of GameFly.

Hearing on the GameFly case. A hearing on GameFly's direct case will be scheduled to begin on June 17, 2010, at 9:30 a.m. in the Commission's hearing room. Participants requesting oral cross-examination of GameFly's witness shall file a notice with the Commission by June 11, 2010. On that same date, June 11, 2010, designations of written cross-examination, if any, shall be filed with the Commission.

Filing of the Postal Service and participants' cases. The Postal Service also requested six weeks from the close of discovery in which to file its direct case. (Tr. 2 at 45). Upon consideration of the arguments of counsel, I am establishing July 7, 2010, as the deadline for the Postal Service and any other participants to file their direct case. This is 12 weeks after GameFly filed its direct case and three weeks from the receipt into evidence of that case.

Discovery of the Postal Service and participants' cases. Discovery of the Postal Service and participants' cases, if any, shall be completed on or before July 28, 2010. This will give GameFly three weeks to pursue discovery.

² First Discovery Requests of the United States Postal Service to GameFly, Inc. (USPS/GFL-1 through-46), May 4, 2010.

Hearing on the Postal Service and participants' cases. A hearing on the Postal Service's and any participants' direct cases will be scheduled to begin on August 18, 2010, at 9:30 a.m. in the Commission's hearing room. Participants requesting oral cross-examination shall file a notice with the Commission by August 13, 2010. On that same date, August 13, 2010, designations of written cross-examination, if any, shall be filed with the Commission.

GameFly rebuttal case. GameFly may elect to file surrebuttal testimony following the conclusion of the hearing on the Postal Service and any participants' cases. If it elects to file surrebuttal, it shall file a notice of its election with the Commission not later than the next business day following the conclusion of the hearing on the Postal Service and participants' cases. Surrebuttal testimony shall be due on August 27, 2010.

Hearing on the GameFly surrebuttal evidence. If GameFly elects to file surrebuttal testimony and a hearing is requested, such hearing will be scheduled to begin on September 2, 2010, at 9:30 a.m. in the Commission's hearing room. Participants requesting oral cross-examination of GameFly witnesses shall file a notice with the Commission by August 31, 2010.

Briefs. Initial briefs must be filed not later than two weeks following the conclusion of hearings. Reply briefs must be filed not later than four weeks following the conclusion of hearings. If hearings on the Postal Service's and participants' cases begin and end on August 18, 2010, and GameFly elects not to file surrebuttal evidence, initial and reply briefs will be due on September 1 and 15, 2010, respectively. If GameFly files surrebuttal evidence, initial and reply briefs will be due on September 16 and 30, 2010, respectively.

RULING

The schedule for the remainder of this proceeding is provided in the Attachment to this Ruling.

Dan G. Blair
Presiding Officer

Procedural Schedule for Docket No. C2009-1

(May 7, 2010)

Close of initial discovery on GameFly's direct case	May 26, 2010
Notice of intent to conduct oral cross-examination and designation of written cross-examination	June 11, 2010
Hearing on GameFly's direct case (9:30 a.m., Commission's hearing room)	June 17, 2010
Filing of the Postal Service's and participants' direct cases	July 7, 2010
Close of discovery on the Postal Service's and participants' direct cases	July 28, 2010
Notice of intent to conduct oral cross-examination and designation of written cross-examination	August 13, 2010
Hearing on the Postal Service's and participants' direct cases (9:30 a.m., Commission's hearing room)	August 18, 2010
GameFly notice of intent to file surrebuttal testimony	August 19, 2010
Filing of GameFly surrebuttal testimony (if requested)	August 27, 2010
Notice of intent to conduct oral cross-examination	August 31, 2010

Hearing on GameFly's surrebuttal case (9:30 a.m. Commission's hearing room, if necessary)	September 2, 2010
Filing of initial briefs (two weeks after conclusion of hearings)	
If no surrebuttal testimony filed	September 1, 2010 ¹
If rebuttal testimony filed	September 16, 2010 ²
Filing of reply briefs (two weeks after filing of initial briefs).	
If no surrebuttal testimony filed	September 15, 2010
If rebuttal testimony filed	September 30, 2010

¹ For illustrative purposes. This date assumes hearings on Postal Service and participants' cases end on August 18, 2010.

² For illustrative purposes. This date assumes hearings on GameFly surrebuttal testimony end on September 2, 2010.