

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

COMPLAINT OF GAMEFLY, INC.

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Docket No. C2009-1

**RESPONSE OF GAMEFLY, INC.,
TO POSTAL SERVICE NOTICE OF INTENT
TO CONDUCT ORAL CROSS-EXAMINATION
(July 19, 2010)**

Pursuant to ordering paragraph 3 of Presiding Officer's Ruling No. C2009-1/24, GameFly, Inc. ("GameFly") hereby responds to the list of cross-examination topics set forth in the Postal Service's July 12 Notice of Intent to Conduct Oral Cross-Examination.

The Notice fails to comply with the Presiding Officer's Ruling, which specified that the Postal Service

must, for *each* GameFly discovery response on which it proposes to conduct cross-examination, identify the subject matter and *specific lines of questioning* that the Postal Service intends to conduct.

Id. at 11. Instead of complying with this requirement, the Postal Service has simply listed the universe of GameFly's discovery responses, followed by catch-all boilerplate that is little more than an elaborate restatement or paraphrase of the first sentence of Rule 3001.30(e)(3) ("Oral cross-examination will be permitted for clarifying written cross-examination and for testing assumptions, conclusions or other opinion evidence."). And topic number (5)—"All other topics raised in GameFly's responses to discovery"—is so broad and content-free as to be meaningless.

GameFly's witnesses will nevertheless attempt to answer the questions posed in topics (1) through (4) of the Postal Service's list. But the Postal Service should not be surprised if the witnesses fail to anticipate and prepare for every possible line of questioning concealed in the Postal Service's *portmanteau* descriptions. And the Commission should disallow any reliance by the Postal Service on the catch-all provision (5).

Needless to say, the foregoing response does not constitute a waiver of any relevance or other objections that GameFly may make concerning particular questions asked by the Postal Service. And GameFly's failure to respond in kind to the Postal Service's reckless allegations about "spoliation of evidence" (USPS Notice at 2-3) should not be taken as an admission concerning their merit.

Respectfully submitted,

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July 19, 2010