

PRESIDING OFFICER'S
RULING NO. C2009-1/42

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Complaint of GameFly, Inc.

Docket No. C2009-1

PRESIDING OFFICER'S RULING CONCERNING BRIEFING

(Issued October 27, 2010)

P.O. Ruling No. C2009-1/38 established November 8 and November 18, 2010 as the dates by which initial and reply briefs must be filed. Rule 34 of the Commission's rules of practice sets forth the basic requirements for the form and content of Commission briefs. Included in rule 34 is a requirement that briefs contain "[a] discussion of the evidence, reasons, and authorities relied upon with exact references to the record and the authorities...." 39 U.S.C. 3001.34(b)(4). This ruling establishes additional requirements intended to facilitate review and analysis of the parties' briefs by making citations to the record and to relevant authorities readily available to opposing parties and to the Commission.

The principal objective of this ruling is to avoid unnecessary delay in the issuance of a final decision and is being taken pursuant to rule 23(a)(10) of the rules of practice, which authorizes the Presiding Officer "[t]o take any other action necessary or appropriate to the discharge of the duties vested in [presiding officers]...."

Previous filings in this case have cited a large number of documents produced during discovery, contained in the files of other Commission cases, or obtained from other sources. See, e.g., Memorandum of GameFly, Inc. Summarizing Documentary Evidence, April 12, 2010 (Memorandum). Precedents from other regulatory agencies have also been cited. *Id.* In light of this prior experience, it is fair to expect that the

initial and reply briefs in this proceeding will also contain citations to a substantial number of documents and at least some precedents from other regulatory agencies.

In order to ensure ready access to referenced documents and authorities, the parties will be required to prepare and file an appendix accompanying each of their briefs that includes a copy of the relevant portion of each document that is cited in that party's brief and has not been copied into one of the public or non-public transcripts in this proceeding. This includes designated written cross-examination that has been admitted into evidence, but has not been copied into the transcript. Moreover, should a party cite to an earlier pleading which itself relies upon a supporting document not copied into a transcript, that supporting document should also be included in the appendix to that party's brief. Finally, complete copies of any cited orders or decisions of regulatory agencies, other than orders or decisions of the Commission, should also be included in appendices.

GameFly's April 12, 2010 Memorandum requires separate consideration. The Memorandum cites to numerous documents, all of which have been copied into the Transcript Volume 4. While the documents cited in the Memorandum are in the transcript and therefore do not need to be reproduced in an appendix to an initial or reply brief, citations to those documents in the Memorandum are not correlated with the pages of the transcript on which they appear. Accordingly, any citations in a party's brief to portions of GameFly's Memorandum that rely upon documents copied into Transcript Volume 4 must provide a reference to the appropriate page on which the document can be found in Transcript Volume 4. Similarly, any reference to other pleadings with subsidiary citations to evidentiary documents should include a reference to where the latter materials may be found in the record.

While not required, it is recommended that the appendix that accompanies each brief contain a table of contents that will facilitate the location of documents or authorities contained in the appendix. Whether or not a party elects to include a table of contents, the references in that party's brief to materials contained in the appendix must

be clear. In preparing appendices, the parties should be sensitive to the possible need to file both a public and a non-public version of their appendices.

RULING

1. The initial and reply briefs to be filed on November 8, 2010, and November, 18, 2010, respectively, shall be accompanied by appendices containing documents and orders of regulatory agencies, other than orders issued by the Commission, that are cited in those initial and reply briefs and are not set forth in the transcripts developed in this proceeding.
2. Citations to GameFly's April 12, 2010 Memorandum or other pleadings that cite to documents copied into the transcript must provide appropriate references to the transcript pages on which such documents have been reproduced.

Dan G. Blair
Presiding Officer