

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

COMPLAINT OF GAMEFLY, INC.)
)
) Docket No. C2009-1

**MOTION OF GAMEFLY, INC.,
FOR EXTENSION OF TIME TO FILE
APPENDIXES OF DOCUMENTS ACCOMPANYING
INITIAL BRIEFS
(November 5, 2010)**

Presiding Officer's Ruling No. C2009-1/42 directed the parties to compile appendices of documents to accompany their initial briefs, which are due on November 8. POR-42 at 2. The required Appendices are to include "a copy of the relevant portion of each document that is cited in [a] party's brief and has not been copied into one of the public or non-public transcripts in this proceeding" and "complete copies of any cited orders or decisions of regulatory agencies, other than orders or decisions of the Commission." *Id.* Because of the considerable amount of time that will be needed for each party to compile its appendix and in light of delays in finalizing the record, GameFly moves that the time for filing the appendix be extended until Friday, November 12, 2010. The briefing schedule should otherwise remain as set forth in POR-42.

As the Presiding Office recognized in his order, the briefs in this case are likely to rely on a large volume of documents. While many of these documents appear in the transcript, many others do not. Moreover, the evidentiary status of many of these documents remains to be resolved by the Presiding Officer in

response to the October 29 motions of GameFly and the Public Representative to admit various documents into evidence, and the November 1 motion to the Postal Service to strike the rebuttal testimony of GameFly witness Sander Glick (GFL-RT-1). While GameFly will be able to prepare its brief despite this uncertainty, compilation of the appendix will be difficult until these issues are resolved.

Additionally, more documents may be transcribed into the record once the Presiding Officer issues his decisions on the pending motions. Even if those decisions are issued immediately, new versions of the transcript will not be available in time to include transcript references to these documents in the briefs. Consequently, the appendices may needlessly include large volumes of documents that could be omitted if this extension is granted. Finally, GameFly believes that this extension is necessary to allow the parties to concentrate on preparing their briefs and react to any decisions issued by the Presiding Officer in the days before briefs are due.

GameFly believes that no participant will be prejudiced by a delay in filing appendices. Granting an extension solely for the filing of appendices will allow the briefing schedule to remain intact. Moreover, because all participants in this case already have access to any of the documents that might be cited, the proposed delay in the filing of the appendices will not adversely impact preparation of reply briefs. Furthermore, the Commission will still receive the documents in question before reply briefs are filed.

We are authorized by counsel for the Public Representative to state that the Public Representative does not oppose this motion. Counsel for the Postal Service states that the Postal Service does not oppose the motion provided a similar extension is granted for the filing of appendices to the reply briefs.

Respectfully submitted,

/s/

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

Counsel for GameFly, Inc.

November 5, 2010