

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

Before Commissioners:

Ruth Y. Goldway, Chairman;
Mark Acton, Vice Chairman;
Nanci E. Langley; and
Robert G. Taub

Periodic Reporting
(Proposals Sixteen through Twenty)

Docket No. RM2012-2

ORDER WITHDRAWING FILING

(Issued December 22, 2011)

On November 30, 2011, the Postal Service filed its original petition to institute a rulemaking to consider the methodological changes contained in Proposals Sixteen through Twenty.¹ The November 30 petition contained a sentence that ranked the volume of business reply mail of GameFly, Inc. compared to other non-letter shaped business reply mail. That sentence was supplemented with an extended footnote (Footnote 6) that described the procedures that the Postal Service follows in processing the GameFly's business reply mail.

On December 7, 2011, GameFly filed a motion to strike the sentence discussing GameFly's business reply volume and its accompanying footnote, alleging that this

¹ Petition of the United States Postal Service Requesting Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposals Sixteen through Twenty), November 30, 2011 (Petition).

material was irrelevant to the Postal Service's petition, violated certain mailer privacy protections in Title 39, and disclosed commercially sensitive information that should remain confidential.²

On December 13, 2011, the Postal Service filed a response to GameFly's motion.³ The response was accompanied by an amended petition to initiate a rulemaking to vet Proposals Sixteen through Twenty. In the Postal Service's response, it explained that to expedite consideration of those proposals, it was filing an amended petition from which the offending sentence and footnote had been expunged.

The Commission issued Order No. 1053 on December 16, 2011. It initiated the rulemaking proceeding requested by the Postal Service. It also noted that the Postal Service had filed an amended Petition from which the sentence and footnote challenged by GameFly had been expunged. The Order assumed that the Postal Service had voluntarily provided GameFly with the relief that it had requested.

On December 20, 2011, GameFly filed a motion asking that the Commission clarify Order No. 1053.⁴ It explains that it does not consider it sufficient to have the original Postal Service petition superceded by an amended petition. It is concerned that the superceded petition remains on public view on the Commission's website, and thereby could be conveniently cited by the Postal Service in future litigation concerning GameFly's business reply mail activity. It requests that the original Postal Service petition be placed under seal pending the resolution of its motion, and that the original petition be expunged in its entirety or each page marked as "withdrawn" so that if a participant in a future proceeding should access it in under seal, it could not cite the challenged material. Second Motion at 3.

² Motion of GameFly, Inc., to Strike Portions of USPS Petition for Rulemaking, Docket No. RM2012-2, Dec. 7, 2011. (First Motion).

³ Response of the United States Postal Service to Motion of GameFly, Inc., to Strike Portions of USPS Petition for Rulemaking, December 13, 2011.

⁴ Motion of GameFly, Inc. to Clarify Order No. 1053 and for Supplemental Relief, December 20,, 2011. (Second Motion).

In the Commission view, the pleadings filed thus far establish a path for resolution of this disclosure dispute. The Postal Service has filed an amended petition that excludes the challenged material, implying that it agrees that its amended petition should be treated as the only official and valid filing. GameFly clarifies that the relief it seeks is withdrawal of public access to the superceded petition, to prevent citation to the challenged material. The Commission infers that having offered to supercede its original petition with an amended version that excludes the challenged material, the Postal Service has no reason to object to the physical withdrawal of its superceded petition from the Commission's public files. The Commission, therefore, orders the withdrawal of the Postal Service's original, superceded petition filed on November 30, 2011, from the file in this docket.

It is ordered:

1. The Motion of GameFly, Inc. to Clarify Order No. 1053 and for Supplemental Relief, filed December 20, 2011, is granted to the extent described in the body of this ruling.
2. The Petition of the United States Postal Service Requesting Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposals Sixteen through Twenty), filed November 30, 2011, is hereby withdrawn from the file for this docket.

By the Commission.

Shoshana M. Grove
Secretary