

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

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

COMPETITIVE PRODUCT LIST)
ADDING ROUND-TRIP MAILER)
) Docket No. MC2013-57

COMPETITIVE PRODUCT LIST)
ADDING ROUND-TRIP MAILER)
(MC2013-57)) Docket No. CP2013-75

**MOTION OF GAMEFLY, INC., FOR LEAVE TO FILE
RESPONSE TO REPLY COMMENTS OF NETFLIX, INC.
(August 29, 2013)**

Pursuant to Rule 3001.21(b), GameFly, Inc. (“GameFly”) respectfully requests leave to file its accompanying Response to pages 2-7 of the Reply Comments filed by Netflix, Inc., on August 22, 2013. Although the Commission’s rules do not authorize a response to a reply as a matter of right, Rule 21(b) allows the Commission or presiding officer to accept such a pleading as a matter of discretion in appropriate cases.¹ Good cause exists for allowing GameFly to file such a response here.

¹ See , e.g., Presiding Officer’s Ruling No. C2009-1/23 (June 10, 2010) at 1 n. 3 (granting USPS motion for leave to file reply to GameFly answers to USPS motion to compel); Order No. 1763 (June 26, 2013) at 5 n. 7 (allowing GameFly

Netflix's comments concern a question that has emerged for the first time as a significant issue in this case during the past month: once new equalized rates take effect on September 30 for round-trip DVD mailers (whether classified as a market dominant product remaining within First-Class Mail or a new competitive product), should Netflix be allowed the alternative of continuing to enter its DVD mailers as generic First-Class or Standard Mail letters? See GameFly Response to USPS Motion for Reconsideration (August 2, 2013) at 14; USPS Response to Order No. 1794 (August 5, 2013) at 2 n. 4; GameFly Comments (August 15, 2013) at 32-34; Netflix Reply Comments (Aug. 22, 2013) at 2-7.

This issue, if not resolved properly, could undo all of the decisions in this case over the past four years, and force the case back into the Court of Appeals. GameFly believes the attached Response will help the Commission resolve the issue in the proper legal context.

surreply); *id.* at 9 n. 13 (allowing USPS surreply); see *also* Presiding Officer's Ruling No. MC2004-3/2 at 5 n. 17 (granting Bank One motion for leave to file reply to reply); Presiding Officer's Ruling No. R2001-1/20 at 6 n. 9 (granting OCA request for leave to file reply to reply); Presiding Officer's Ruling No. R97-1/20 at 10 ¶ 6 (granting motion of Nashua Photo Inc. *et al.* for leave to file reply to reply); Presiding Officer's Ruling No. MC96-3/13 at 6 n. 3 (same).

Respectfully submitted,

A handwritten signature in black ink that reads "David M. Levy". The signature is written in a cursive style with a long, sweeping tail on the letter "y".

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

Counsel for GameFly, Inc.

August 29, 2013