

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

COMPLAINT OF GAMEFLY, INC.

Docket No. C2009-1(R)

COMPETITIVE PRODUCT LIST  
ADDING ROUND-TRIP MAILER

Docket No. MC2013-57

COMPETITIVE PRODUCT LIST  
ADDING ROUND-TRIP MAILER

Docket No. CP2013-75

**UNITED STATES POSTAL SERVICE RESPONSE TO FEDERAL EXPRESS  
CORPORATION COMMENTS**  
(September 23, 2013)

On September 17, 2013, Federal Express Corporation (FedEx) filed a Comment on the Scope of the Postal Monopoly in this proceeding. The Postal Service appreciates Federal Express Corporation's (FedEx's) support for the Postal Service's position that Round-Trip Mailers are not subject to the Private Express Statutes.<sup>1</sup> FedEx's agreement with the Postal Service in this conclusion is the sole aspect of FedEx's comments that has relevance for this limited proceeding, insofar as it goes to whether the Round-Trip Mailer is eligible for competitive product status under 39 U.S.C. § 3642(b).

Even this is a generous reading of Order No. 1827. In that Order, the Commission provided that

GameFly and other interested persons should be given an opportunity to address the arguments and supporting information presented by the Postal Service in its Reply Comments and associated library references.

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<sup>1</sup> Federal Express Corporation Comment on the Scope of the Postal Monopoly (hereinafter "FedEx Comments"), PRC Docket No. MC2013-57 (Sept. 17, 2013), at 1.

The Postal Service should, in turn, be given an opportunity to respond to arguments and information offered by GameFly or other parties.<sup>2</sup>

If anything, FedEx falls into the camp of “other interested persons.” However, neither the Postal Service’s August 22 Reply Comments nor the supporting information that the Postal Service filed on August 22 and 26 dealt with the Private Express Statutes. By its own admission,<sup>3</sup> FedEx is “respond[ing] to new issues or facts raised” in the initial round of post-Order No. 1827 comments, even though Order No. 1827 did not contemplate any parties beyond the Postal Service doing so.<sup>4</sup> While the Postal Service might not object in principle to FedEx or any other interested person responding in this manner, FedEx’s comments raise a significant number of “new issues or facts,” at a late juncture, that call for further response. Even if Order No. 1827 is fairly extended to allow for comments by third parties supporting the Postal Service’s position, those late-filed comments should not be allowed to raise new, weighty, and tangential issues that, if discussed and considered in this proceeding, would only impede its timely resolution.

The Postal Service finds much to dispute about FedEx’s analysis of the Private Express Statutes, but as Order No. 1827 recognizes, this proceeding has a narrow focus and a tight timeframe for resolution. There are multiple other types of Commission proceedings that would be better-suited to consideration of the broader legal and policy issues that the post-PAEA Private Express Statutes pose. Indeed, an alternative venue would give the Commission greater opportunity to solicit and hear views from various parties with an interest in the Private Express Statutes. In contrast, consideration of such issues in this proceeding would unduly prolong this proceeding

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<sup>2</sup> See Order No. 1827 at 13-14 (emphasis added).

<sup>3</sup> FedEx Comments at 1.

<sup>4</sup> Order No. 1827 at 15 (internal quotation marks omitted).

and might even invite challenges from other interested parties (beyond those already interested in the Round-Trip Mailer product) that Order No. 1827 did not provide them adequate notice that this proceeding would serve as a forum on the post-PAEA Private Express Statutes in general. Therefore, while the Commission should certainly credit FedEx's support for the proposition that Round-Trip Mailers fall outside the Private Express Statutes, the Commission should, if anything, reserve any further consideration of FedEx's comments for another, more fitting venue.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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