

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

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

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

**CONSENT MOTION OF GAMEFLY, INC.,
FOR ACCESS TO NONPUBLIC MATERIALS FILED BY
THE UNITED STATES POSTAL SERVICE AND NETFLIX, INC.
(January 24, 2014)**

Pursuant to 39 C.F.R. § 3007.40, GameFly, Inc. (“GameFly”) respectfully requests access to (1) USPS nonpublic library reference USPS-LR-MC2013-57/NP7, a nonpublic library reference filed by the Postal Service on January 17 as part of its response to Chairman’s Information Request 1, and (2) the nonpublic version of the January 16 response of Netflix to Chairman’s Information Request No. 3. The Postal Service and Netflix state that the nonpublic material consists of revenue and volume information for Netflix and GameFly. GameFly needs access to the materials so that the company may evaluate their implications for the parties’ competitive claims. The Postal Service and Netflix consent to this motion.

GameFly designates the following individuals as its reviewing representatives pursuant to Appendix A to Part 3007 of 39 C.F.R.:

David M. Levy, Partner, Venable LLP (legal counsel for GameFly)

Matthew D. Field, Partner, Venable LLP (legal counsel for GameFly)

Robert P. Davis, Of Counsel, Venable LLP (legal counsel for GameFly)
Lawrence G. Buc, President, SLS Consulting (economic consultant to GameFly)
Sander Glick, Vice President, SLS Consulting (economic consultant to GameFly)
David Hodess, CEO, GameFly, Inc.

All six individuals have been authorized reviewing representatives of GameFly under the protective conditions established by the Commission in these cases and in Docket C2009-1. In this capacity, all six have had access to proprietary information about the Postal Service and Netflix.

Executed copies of the Appendix A protective conditions are attached.

Respectfully submitted,

A handwritten signature in black ink that reads "David M. Levy". The signature is written in a cursive, flowing style.

David M. Levy
Matthew D. Field
Robert P. Davis
VENABLE LLP
575 7th Street, N.W.
Washington, DC 20004
(202) 344-4732

Counsel for GameFly, Inc.

January 24, 2014

STATEMENT OF COMPLIANCE WITH PROTECTIVE CONDITIONS

The Postal Service and Netflix, Inc., have filed certain non-public materials in Commission Docket No. MC2013-57, *Competitive Product List—Adding Round-Trip Mailer*, and Docket No. CP2013-75, *Competitive Product List—Adding Round-Trip Mailer (MC2013-57)*:

- (1) USPS nonpublic library reference USPS-LR-MC2013-57/NP7, a nonpublic library reference filed by the Postal Service on January 17, 2014, as part of its response to Chairman's Information Requests 1.
- (2) The nonpublic version of the January 16, 2014, response of Netflix to Chairman's Information Request No. 3.

The Postal Service and Netflix request confidential treatment of the materials (hereinafter "these materials").

The following protective conditions limit access to these materials. Each person seeking to obtain access to these materials must agree to comply with these conditions, complete the attached certifications, and provide the completed certifications to the Commission and counsel for the Postal Service.

1. Access to these materials is limited to a person as defined in rule 5(f), 39 CFR 3001.5(f), or an individual employed by such person, or acting as agent, consultant, contractor, affiliated person, or other representative of such person for purposes related to the matter identified as Docket No. MC2013-57, *Competitive Product List—Adding Round-Trip Mailer*, or Docket No. CP2013-75, *Competitive Product List—Adding Round-Trip Mailer (MC2013-57)*. However, no person involved in competitive decision-making for any entity that might gain competitive advantage from use of this information shall be granted access to these materials. "Involved in competitive decision-making" includes consulting on marketing or advertising strategies, pricing, product research and development, product design, or the competitive structuring and composition of bids, offers or proposals. It does not include rendering legal advice or performing other services that are not directly in furtherance of activities in competition with a person or entity having a proprietary interest in the protected material.
2. No person granted access to these materials is permitted to disseminate them in whole or in part to any person not authorized to obtain access under these conditions.

3. Immediately after access has terminated under rule 39 CFR 3007.41 or 3007.51, a person (and any individual working on behalf of that person) who has obtained a copy of these materials shall certify to the Commission:
 - (a) That the copy was maintained in accordance with these conditions (or others established by the Commission); and
 - (b) That the copy (and any duplicates) either have been destroyed or returned to the Commission.
4. The duties of each person obtaining access to these materials shall apply to material disclosed or duplicated in writing, orally, electronically, or otherwise, by any means, format, or medium. These duties shall apply to the disclosure of excerpts from or parts of the document, as well as to the entire document.
5. All persons who obtain access to these materials are required to protect the document by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized disclosure of the document as those persons, in the ordinary course of business, would be expected to use to protect their own proprietary material or trade secrets and other internal, confidential, commercially sensitive, and privileged information.
6. These conditions shall apply to any revised, amended, or supplemental versions of these materials provided in the matter identified as Docket No. MC2013-57, *Competitive Product List—Adding Round-Trip Mailer*, and Docket No. CP2013-75, *Competitive Product List—Adding Round-Trip Mailer (MC2013-57)*.
7. The duty of nondisclosure of each person obtaining access to these materials is continuing, terminable only by specific order of the Commission, or as specified in paragraphs 9 and 10, below.
8. Each person granted access to these materials consents to these or such other conditions as the Commission may approve.
9. Any written materials that quote or contain materials protected under these protective conditions are also covered by the same protective conditions and certification requirements, and shall be filed with the Commission only under seal. Documents submitted to the Commission as confidential shall remain sealed while in the Secretary's office or such other place as the Commission may designate so long as they retain their status as stamped confidential documents.
10. If a court or other administrative agency subpoenas or orders production of confidential information which a person has obtained under the terms of this protective order, the target of the subpoena or order shall promptly (within 2

business days) notify the Postal Service of the pendency of the subpoena or order to allow it time to object to that production or seek a protective order.

CERTIFICATION

The undersigned represents that:

Access to these materials provided in the matter identified as Docket No. C2009-1R, *Complaint of GameFly, Inc.*, Docket No. MC2013-57, *Competitive Product List—Adding Round-Trip Mailer*; and Docket No. CP2013-75, *Competitive Product List—Adding Round-Trip Mailer (MC2013-57)* by the Postal Service has been authorized by the Commission. The cover or label of the copy obtained is marked with my name. I agree to use the information only for purposes of analyzing matters at issue in the matter identified as Docket No. MC2013-57, *Competitive Product List—Adding Round-Trip Mailer*; and Docket No. CP2013-75, *Competitive Product List—Adding Round-Trip Mailer (MC2013-57)*. I certify that I have read and understand the above protective conditions and am eligible to receive access to materials under paragraph 1 of the protective conditions. I further agree to comply with all protective conditions and will maintain these materials in strict confidence in accordance with all of the protective conditions set out above.

Name

Lawrence G. Buc

Firm

SLS Consulting, Inc

Title

President

Representing

Game Fly

Signature

Lawrence G. Buc

Date

January 17, 2013

CERTIFICATION

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Name

Robert Davis

Firm

Venable LLP

Title

Of Counsel

Representing

GameFly, Inc.

Signature



Date

1/17/2014

CERTIFICATION

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Name Matthew D. Field

Firm Venable LLP

Title Partner

Representing GameFly, Inc.

Signature Matthew D. Field

Date 1/17/2014

CERTIFICATION

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Name Sander Glick

Firm SLS Consulting

Title Vice President

Representing Gamefly

Signature Sander Glick

Date 1/17/2014

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Name DAVID HODDSS

Firm GAMEFLY, INC

Title CEO

Representing GAMEFLY, INC

Signature 

Date 1-17-14

CERTIFICATION

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Name David M. Levy

Firm Venable LLP

Title Partner

Representing GameFly

Signature David M. Levy

Date Jan. 17, 2014