

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

Competitive Product List
Adding Round-Trip Mailer

Docket No. MC2013-57

Competitive Product Prices
Round-Trip Mailer (MC2013-57)

Docket No. CP2013-75

COMMENTS OF THE PUBLIC REPRESENTATIVE
IN RESPONSE TO ORDER NO. 2011
(March 21, 2014)

Pursuant to Order No. 2011,¹ the Public Representative respectfully submits these comments to address the responses to CHIR Nos. 1, 2, and 3,² regarding the Postal Service's request to create a Competitive Round Trip DVD Mailer Product.³

The CHIR sought information and context for the proposal from the Postal Service, GameFly, and Netflix. CHIR No. 1 was directed at the Postal Service. The Commission requested the following information: the volume of round-trip DVD mailers, studies of the round-trip DVD market, studies of the electronic media delivery channel, and details of how a competitive round-trip mailer would be implemented. CHIR No. 2 was directed at GameFly, and requested information regarding historical usage of the Postal Service and alternate channels, as well as any studies concerning the feasibility and/or cost of alternate means of delivery. CHIR No. 3 was directed at Netflix, and requested information regarding historical usage of the Postal Service and alternate channels, as well as any studies concerning the feasibility and/or cost of alternate means of delivery.

¹ Order No. 2011 Order Establishing Comment Dates, March 7, 2014.

² Response of Netflix, Inc., to CHIR 1-3, January 16, 2014 (Netflix Response); Response of the United States Postal Service to CHIR No. 1, January 17, 2014 (Postal Service Response); Response of GameFly, Inc. to CHIR 1-3, January 17, 2014 (GameFly Response).

³ Docket No. C2009-1R, Request of the United States Postal Service Under Section 3642 to Create Round-Trip Mailer Product, July 26, 2013, at 2 (Request).

In Response to Order No. 1827,⁴ the Public Representative described the deficiencies in the Postal Service's filing and the record in this docket. To reiterate, Section 3642 allows the Postal Service to transfer (or create) Competitive Products. Section 3642(1) states:

The market-dominant category of products shall consist of each product in the sale of which the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products. The competitive category of products shall consist of all other products.

The Public Representative cautiously advised the Commission that "the Postal Service has not provided sufficient information for the Commission to determine the Round Trip DVD mailer is a competitive product. Notably, the Postal Service has not provided: an elasticity for the Round Trip DVD product; a cross elasticity between DVD by mail products, streaming media products, and retail DVD rental products; or an explanation why the DVD mail market is not a captive market protected by the CPI cap as envisioned by the PAEA."⁵

While the Commission's CHIRs were well intentioned, the Postal Service has been unable to meaningfully respond. The Postal Service did not provide any studies or information in response to CHIR No. 1 detailing how or why the Postal Service is unable to exercise market power with respect to GameFly and Netflix. The Postal Service's extended discussion of electronic alternatives to physical delivery is a red herring and cannot substitute for actual analysis of markets and market power. The only meaningful information provided by the Postal Service was in response to CHIR No. 1 question 1, which requested round-trip DVD mailer volumes. The Postal Service stated, "[i]n addition to showing the continuing decline in Netflix DVD volumes, these data are also noteworthy because they show a continuing decline in GameFly volumes despite a roughly 50% price decrease at the beginning of FY2014."

⁴ Comments of the Public Representative in Response to Order No. 1827. September 11, 2013. (PR Comments.

⁵ PR Comments at 5.

The volumes of one mailer for one quarter cannot be substituted for a meaningful study of elasticity. Anecdotally, the volume response of GameFly to a real decrease in price can be explained and understood. GameFly is a captive customer of the Postal Service (as the four years they have been in front of the Commission highlights), and they are price inelastic-- like First-Class Mail as a whole.

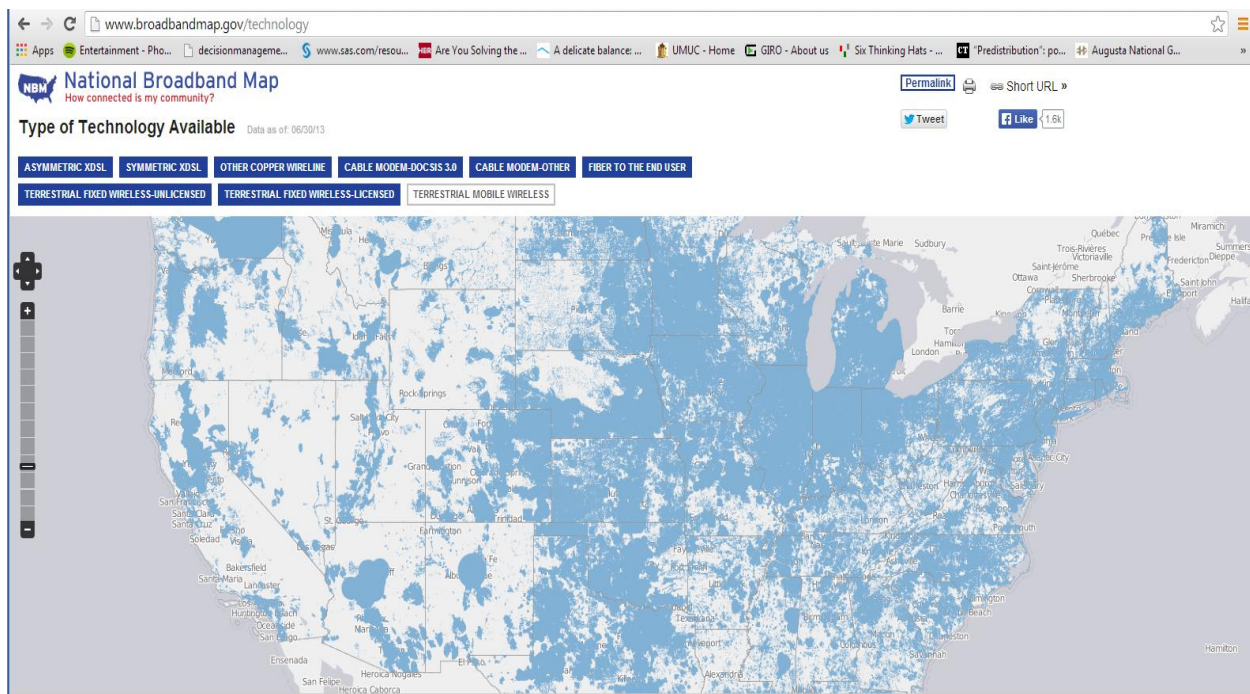
Let us consider the volume history of GameFly in reverse. Moving from FY 2014 to FY 2013 and FY 2012, GameFly faced significantly higher prices. Yet, the Postal Service did not “lose a significant level of business to other firms offering similar products.”⁶ Simply put, there are no other firms offering similar products. The Postal Service maintains a monopoly on the physical delivery of letters, be they a “thank you” card or electronic media. The Price Cap was put in place for market dominant products to protect mailers from the very monopolistic behavior that is the ongoing basis for this docket.

There are two other important issues that the Postal Service has failed to meaningfully discuss in this docket. First, as initially described by the PR Comments, the Postal Service continues to fail to comply with Section 3642(b)(3)(C). It has failed to analyze the national market of DVD mailers or reach out to those small DVD mailers and small businesses affected by this docket. In response to CHIR No. 1, the Postal Service did not provide the volume history of round-trip DVD mailers that have commented in this docket, such as MMAVault. Despite that some of these DVD mailers are now participants in this docket; the Postal Service continues to proceed as if it is unaware of their existence or worse yet, apathetic to it.

Second, the Postal Service’s red-herring argument regarding the oncoming and ongoing tide of digital streaming options reveals a major difference between a monopoly required to provide universal service at non-discriminatory rates and the other content delivery channels with which it alleges it competes. The Postal Service is a universal content provider. Comcast, Verizon, Sony, Microsoft (Xbox), RedBox, UPS, FedEx,

⁶ Section 3642(1).

Valve, Netflix, Gamefly, and all other private providers of digitized content providers are under no obligation to provide universal service. Unsurprisingly, they do not provide universal service. The following chart is the national broadband map, available at www.broadbandmap.gov. The areas in white are where consumers do not have access to broadband.



The graphic details the wide gaps in broadband coverage that currently exist in the United States. According to research by the Pew Group, 70 percent of Americans 18 and older have broadband internet access at home.⁷

The Postal Service's failure to address the captive consumer in this market, the rural or remote mailer, is disturbing. The Postal Service is unique in that it is obligated to be a national universal service provider. For individuals and businesses located in

⁷ <http://www.pewinternet.org/2013/08/26/home-broadband-2013/>

remote or rural areas without DVD kiosks, such as RedBox, or broadband service for streaming, DVD-round trip mailers are the only viable option for such electronic media. Consequently, these individuals and businesses are captive consumers of the DVD round-trip mailer market, beholden to the Postal Service on two fronts: 1) as the only mail service provider to their remote and rural locales; and 2) as the only legitimate carrier of first-class mail.

Respectfully submitted,

/s/
Tracy N. Ferguson
Public Representative

/s/
John Klingenberg
Public Representative

901 New York Ave. NW
Washington, DC
202-789-6844
FAX: 202-789-6891
Tracy.Ferguson@prc.gov