

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

Complaint of Capital One Services, Inc.)

Docket No. C2008-3

PUBLIC REPRESENTATIVE MOTION TO COMPEL RESPONSE
TO INTERROGATORY TO UNITED STATES POSTAL SERVICE
(PR/USPS-12)
September 9, 2008

On August 26, 2008, the Public Representative submitted discovery requests to the Postal Service.¹ On September 5, 2008, the Postal Service objected to interrogatory PR/USPS-12.² Pursuant to Rules 26(c) and 27(c) of the Rules of Practice of the Postal Regulatory Commission, the Public Representative hereby moves to compel responses to the interrogatory and request for production of documents. The text of the interrogatory and request for production of documents is set out here.

PR/USPS-12. Please refer to the Postal Service's response to PR/USPS-3.

- a. Pursuant to Rate Schedule 630A (First-Class Mail), please provide the value of the discounts earned by, but not paid to, Bank of America. Please provide an electronic spreadsheet showing the Postal Service's calculation of the discounts earned by Bank of America. If Bank of America has prepared a separate calculation of the discounts earned, please provide that calculation. Finally, please explain the differences between the Postal Service's and Bank of America's calculations.
- b. Pursuant to Rate Schedule 630D (Standard Mail), please provide the value of the discounts earned by, but not paid to, Bank of America. Please provide an electronic spreadsheet showing the Postal Service's calculation of the discounts earned by Bank of America. If Bank of America has prepared a separate calculation of the discounts earned, please provide that calculation. Finally, please explain the differences between the Postal Service's and Bank of America's calculations.

¹ Public Representative Follow-Up Interrogatories to United States Postal Service (PR/USPS-11-14) August 26, 2008.

² Objection of the United States Postal Service to Interrogatory of Public Representative (PR/USPS-12), September 5, 2008.

The Postal Service objects on grounds of relevance and commercial sensitivity. A similar objection was overruled in Ruling No. C2008-3/14, issued the same date as the Postal Service's current objection. Consistency with Ruling No. 14 requires the Postal Service to respond to PR/USPS-12 under seal.

The relevance of Interrogatory 12 is best determined by reference to the Postal Service's response to Interrogatory PR/USPS-10.³ In its response the Postal Service claims,

Capital One's read and accept rates for automation letter mail would be significantly above the thresholds used in the Bank of America NSA, and that using those thresholds would result in a net reduction in contribution to the Postal Service.

This statement is speculative, but it would be supported by knowledge of the discounts payable to date under the Bank of America NSA, how the total payable is calculated, and why there is disagreement over the amount payable. Even in the absence of the response to Interrogatory 10, Ruling No. C2008-3/14 has found this type of information to be relevant. In that ruling, the presiding officer stated,⁴

It appears from the two similar questions at issue here that the Public Representative seeks to explore whether differences in the read and accept rates of Bank of America and Capital One mail might cause them to be not "functionally equivalent" or "similarly situated." Absent more specific representations about what facts may form the basis for a decision in this case, it seems that the questions are reasonably drawn to lead to discovery of admissible evidence relevant to the subject matter of this complaint.

³ Response of the USPS to Interrogatory of Public Representative (PR/USPS-10), September 8, 2008.

⁴ Presiding Officer's Ruling on Public Representative Motion to Compel, Ruling No. C2008-3/14, September 5, 2008, at 2.

Similarly, knowledge of the magnitude of potential financial losses—coupled with an understanding of why benefits to the Postal Service would be less under a similar NSA with Capital One—could render Capital One not similarly situated.

In the interest of expedition, the Public Representative does not dispute the commercial sensitivity of the information sought. The Postal Service has asserted that the information sought is protected by nondisclosure agreements (NDAs). However, this information will eventually be made public under the Data Collection Plan established in Docket No. MC2007-1.⁵ The Postal Service has made no showing of how release of the existing data ahead of its scheduled filing could harm the Postal Service. And counsel for the Postal Service has informed the Public Representative that the NDAs contain "escape clauses" that permit disclosure of information if ordered by the Commission. Accordingly, the Public Representative requests an immediate order directing the Postal Service to file responses under seal subject to protective conditions like those established in Ruling No. 14.

Respectfully submitted,

EMMETT RAND COSTICH
Public Representative

901 New York Avenue, N.W.
Washington, D.C. 20268-0001
(202) 789-6833; Fax (202) 789-6891
email: rand.costich@prc.gov

⁵ Opinion and Recommended Decision, Docket No. MC2007-1, October 3, 2007, at 55, item 5.