

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

COMPLAINT OF CAPITAL ONE SERVICES, INC.

Docket No. C2008-3

**OBJECTION OF THE UNITED STATES POSTAL SERVICE
TO DOCUMENT REQUEST OF CAPITAL ONE SERVICES, INC.
(COS/USPS-DR-18)
(September 2, 2008)**

In accordance with Rules 25 and 27 of the Commission's Rules of Practice and Procedure, the United States Postal Service hereby objects to Document Requests COS/USPS-DR-18, filed on August 22, 2008. The Postal Service objects to this document request on the grounds of relevance, undue burden, commercial sensitivity, and privilege. The document request states:

DOCUMENT REQUEST COS/USPS-DR-18

Please provide all documents that relate to or support any portion of your response to Interrogatory COS/USPS-12.

In essence, when read in conjunction with COS/USPS-12, COS/USPS-DR-18 asks the Postal Service to provide any documents that related to every piece of testimony it may possibly file, and every legal argument it might make in brief or at any other stage of this proceeding, despite the fact that no procedural schedule has yet

been established.¹ This document request is not reasonably calculated to lead to the discovery of admissible evidence. Documents reflecting the Postal Service's litigation strategy and legal interpretations are not admissible evidence in this proceeding. Moreover, this document request is so broad that it cannot be considered "reasonably calculated" to lead to any admissible evidence. Clearly, this document request reflects Capital One's intent² to anticipate any argument the Postal Service might make in this case and to shift the burden of proof onto the Postal Service. The burden in any complaint case lies with the complainant, not with the Postal Service. Capital One should not be permitted to bypass the testimony, hearing, and briefing stage via this document request. Thus, the Postal Service objects to COS/USPS-DR-18 on the grounds of relevance.

The Postal Service also objects to this document request on the grounds of undue burden. Responding to this document request would require the Postal Service to formulate its possible testimony and outline any legal briefs it may file immediately, in the midst of the discovery process, and even prior to the establishment of a procedural schedule in this Docket. Doing so would require countless additional workhours, involving a number of postal employees. The Postal Service would also have to make its arguments before Capital One would even file its own testimony in support of its Complaint, thereby shifting the burden of proof in this case onto the Postal Service.

¹ The Postal Service incorporates by reference herein all arguments contained in its Objection to COS/USPS-12, which is also being filed today.

² This intent is also reflected in Capital One's proposed procedural schedule. See Response of the United States Postal Service to Motion of Capital One Services, Inc. to Propose Procedural Schedule, Docket No. C2008-3, August 26, 2008.

The Postal Service also objects to this document request on the grounds of commercial sensitivity and privilege. Given the extraordinary breadth of this document request, there are numerous documents that “relate to or support any portion” of the Postal Service’s legal position (and factual support for that legal position) that: 1) contain highly confidential and commercially sensitive materials; 2) contain predecisional and deliberative information subject to the deliberative process privilege; or, 3) contain materials subject to attorney-client or work product privileges. In short, the Postal Service should not be required to produce commercially sensitive or privileged documents pursuant to such an overbroad, irrelevant, and burdensome document request.

For the foregoing reasons, the Postal Service respectfully objects to COS/USPS-DR-18.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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