

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

COMPLAINT OF CAPITAL ONE
SERVICES, INC.

Docket No. C2008-3

**MOTION OF CAPITAL ONE SERVICES, INC.
TO COMPEL RESPONSE TO INTERROGATORY COS/USPS-12**

(September 16, 2008)

Capital One Financial Services, Inc. (Capital One) filed interrogatory COS/USPS-12 and Document Request COS/USPS-DR-18 to the Postal Service on August 22, 2008. On September 2, 2008, the Postal Service filed objections both to the interrogatory and the document request on grounds of relevance and undue burden. Capital One moves to compel responses and documents for the subject requests under Commission Rules 26(d) and 27(d), 39 C.F.R. §§3001.26(d) and 3001.27(d).¹ The subject interrogatory and document request are intended to reflect the Commission's efforts to move complaint proceedings into a new era of postal regulation under the Postal Accountability and Enhancement Act (PAEA).

I. TEXT OF DISCOVERY REQUESTS

Interrogatory COS/USPS-12 and document request COS/USPS-18 are reproduced below.

¹ This pleading addresses both Interrogatory COS/USPS-12 and document request COS/USPS-DR-18. To comply with docketing procedures, Capital One has filed separate motions to compel for the interrogatory and documents request, but the Motion to Compel for the document request simply incorporates this pleading by reference.

Interrogatory COS/USPS-12

Please provide the following information with respect to Docket No. C2008-3:

- (1) a clear and concise statement of any disputed factual allegations upon which the Postal Service relies;
- (2) a clear and concise statement of any legal interpretation upon which the Postal Service relies;
- (3) explanatory detail for each material factual allegation in the Complaint that the Postal Service denied in its Answer, filed July 21, 2008, and, for any denial based on information and belief, an explanation as to why such facts could not reasonably be ascertained by the Postal Service prior to filing the Answer;
- (4) every defense relied upon, including the nature of any defense and factual allegations and law upon which the Postal Service relies. Please provide and separate identify all affirmative defenses.
- (5) a statement of the nature of the evidentiary support that the Postal Service has or expects to obtain to support its factual allegations and defenses.

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.

II. THE CASE WILL PROCEED WITH GREATER EXPEDITION AND EFFICIENCY IF THE PRESIDING OFFICER GRANTS CAPITAL ONE'S MOTION TO COMPEL

Capital One filed its Complaint on June 19, 2008. At that time, the Commission had not yet initiated a rulemaking proceeding to fashion procedures that would be commensurate with its new role under the PAEA. In Order No. 101, Notice and Order

of Proposed Rulemaking Establishing Rules for Complaints,² the Commission instituted a rulemaking docket to bring complaint procedures into conformance with the new objectives introduced by the PAEA. It is in this spirit that Capital One filed interrogatory COS/USPS-12 and document request COS/USPS-18. Interrogatory 12 is nearly a verbatim request for the type of illuminating and clarifying content that the Postal Regulatory Commission has already proposed should be made available at the outset of complaint proceeding.³

The Commission's proposed rule on "Answer Contents" sets forth several reasons for greater emphasis on complaints and related discovery:

- The Commission's complaint authority is considerably expanded under the PAEA.⁴ This is an appropriate counterweight to the much greater independence and flexibility to set rates that the Postal Service enjoys under the PAEA.⁵
- Complaints are now one of the major tools for transparency and accountability to the public.⁶
- Congress wants charges of undue discrimination and preference to be vetted through the complaint process.⁷
- In the modern era, Complaints should be heard and resolved in a streamlined and efficient manner.⁸

² Docket No. RM2008-3, August 21, 2008.

³ The PRC modeled its proposed rule for the content of Answers to Complaints on the rule of the Federal Energy Regulatory Commission. Proposed Rule § 3030.14 "Answer Contents." Order No. 101 at 24. See discussion of the proposed rule at 14-15.

⁴ Order No. 101 at 3

⁵ Id. at 4.

⁶ Id.

⁷ Id. at 8.

⁸ Id. at 1.

III. THE POSTAL SERVICE CLINGS TO AN OUTMODED VIEW OF HOW COMPLAINTS SHOULD BE PROCESSED UNDER THE PAEA

The Postal Service argues that the procedures proposed by the Commission “subvert[] well-established procedures typically utilized in complaint proceedings.”⁹ In addition, the Postal Service recites a litany of burdens, including “countless additional workhours” involving a number of postal employees, and that attorney work products would have to be revealed to the Complainant. In fact, no additional workhours or effort would be required to respond to COS/USPS-12, nor would materials normally kept confidential by attorneys have to be disclosed. What is changed by the proposed new rule (and Capital One’s related interrogatory and document request) is the timing of when that work must be done.

It is true that having the Postal Service articulate its legal position early in the case and make an initial showing of relevant facts differs from the schedule followed by the Commission under the Postal Reorganization Act (PRA). But in the PAEA era, the Commission has recognized that all parties will benefit from the proposed new system because issues will be formulated with clarity and precision from the beginning of the Complaint case. Discovery will be much more focused. This will save Complainant, the Postal Service, and the Commission resources and efforts overall .

Capital One appreciates that the Postal Service is not accustomed to the expanded requirements for Answer Contents suggested by the proposed complaint rules or to preparing responses to interrogatories such as COS/USPS-12 and COS/USPS-DR-18. Therefore, Capital One suggests that should its Motions to Compel

⁹ Postal Service Objection to COS/USPS-12 at 4.

be granted, the Postal Service be given additional time to formulate its response to the discovery requests at issue.

CONCLUSION

For these reasons, Capital One respectfully requests that the Commission direct the Postal Service to answer in full interrogatory COS/USPS-12 and document Request COS/USPS-DR-18.

Respectfully submitted,

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