

RULING NO. C2008-3/2

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Complaint of Capital One Services, Inc.

Docket No. C2008-3

RULING GRANTING APPLICATION FOR DEPOSITION

(Issued August 26, 2008)

Pursuant to Rule 33(b), an Application of Capital One Services, Inc. for Authorization to Depose Jessica Dauer Lowrance of the United States Postal Service (Application) was filed of August 21, 2008. Capital One contends that “Ms. Lowrance is a key and essential witness in this proceeding because of her personal knowledge of the negotiations and decisions relating to the proposed Capital One NSA.” Application at 2. Capital One is aware of Ms. Lowrance’s imminent departure from the Postal Service and seeks an immediate deposition to perpetuate her testimony as she will be unavailable for a hearing. *Id.* at 1, See Rule 33(a).¹

Capital One further requests Ms. Lowrance to bring to the deposition documents from her offices relating to the issues of the complaint. *Id.* at 3.

On August 22, 2008, the Postal Service filed a response to the Application.² The Postal Service informs the Commission that Ms. Lowrance is leaving the employment of the Postal Service, and will no longer be able to testify in a hearing or deposition on

¹ Subsequently, Capital One filed a motion to amend the requested date of the deposition from September 8, 2008 to August 27, 2008. Emergency Motion of Capital One Services, Inc. to Amend Date of Requested Deposition to August 27, 2008, August 25, 2008 (Emergency Motion).

² Response of the United States Postal Service to Application of Capital One Services, Inc. for Authorization to Depose Jessica Dauer Lowrance, August 22, 2008 (Response).

behalf of the Postal Service after August 29, 2008. Because of her short time remaining with the Postal Service, the Postal Service submits that would be difficult to prepare Ms. Lowrance for a deposition in less than one week. The Postal Service also asserts that Ms. Lowrance has not held the position of Acting Manager, Pricing Strategy since November 28, 2007, and lacks personal knowledge of the most recent discussions between the Postal Service and Capital One. Response at 2-3.

The Postal Service further contends that it should not be required to comply with the request to produce documents at the deposition because these documents are the subject of an ongoing discovery dispute. *Id.* at 2.

As an alternative, the Postal Service proposes that if Capital One files a reasonable number of interrogatories by August 25, 2008 directed to Ms. Lowrance, she will provide sworn responses by August 29, 2008, subject to objections.

The Postal Service subsequently filed a response to the Emergency Motion to amend the proposed deposition date.³ In this response, the Postal Service further denies the allegation that it has ignored a good-faith obligation by failing to timely inform Capital One of Ms. Lowrance's departure.

On August 25, 2008, the American Postal Workers Union, AFL-CIO filed comments in support of the Application, and Bank of America filed comments in support of the Response.⁴

Analysis. The Capital One Application meets the applicable criteria for directing the deposition of Jessica Dauer Lowrance. First, the Postal Service asserts that Ms. Lowrance will be unavailable to testify in a hearing or by deposition after August 29, 2008. Second, Capital One in its complaint at paragraphs 30-32 indicates that Ms. Lowrance has made certain assertions to Capital One concerning the availability of

³ Response of the United States Postal Service to Emergency Motion of Capital One Services, Inc. to Amend Date of Requested Deposition to August 27, 2008, August 25, 2008.

⁴ Response of American Postal Workers Union, AFL-CIO in Support of Application of Capital One Services, Inc. for Authorization to Depose Jessica Dauer Lowrance, August 25, 2008, Bank of America Corporation's Response to Ruling Number C2008-3/1, August 25, 2008.

comparable agreements such as: (1) raising the possibility of an agreement but stating that Capital One would not be able to use industry-average rates offered to Bank of America; and (2) stating that her department was not supporting Bank of America-like agreements and were only interested in doing volume-based deals. These assertions are relevant to the resolution of the case. Third, given the pending unavailability of Ms. Lowrance, a deposition is deemed necessary to perpetuate the testimony of the witness. This ruling is not premised on any obligation on the part of the Postal Service to inform Capital One of Ms. Lowrance's departure.

The Postal Service alternative of interrogatories is not acceptable under the stated time constraints. Capital One would not have the opportunity to obtain answers if objections are subsequently overruled or to pose clarifying follow-up questions.

The Commission will be issuing procedures for the deposition shortly. The procedures will address the Capital One request for document production at the deposition, and the Postal Service's objection to this request.

RULING

1. The Application of Capital One Services, Inc. for Authorization to Depose Jessica Dauer Lowrance of the United States Postal Service, filed August 21, 2008, is granted consistent with the body of this ruling.
2. The Emergency Motion of Capital One Services, Inc. to Amend Date of Requested Deposition to August 27, 2008, filed August 25, 2008, is granted. The deposition of Jessica Dauer Lowrance is scheduled for August 27, 2008 at 10:00 AM in the Commission's offices. The Commission has arranged for transcription of the deposition.

3. Katja M. Eichinger is appointed for the purposes of taking oaths and clarifying procedures. Ms. Eichinger will not participate in or provide advice on any substantive Commission decision in this proceeding.

Dan G. Blair
Presiding Officer