

RULING NO. C2008-3/10

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

Complaint of Capital One Services, Inc.

Docket No. C2008-3

RULING CONCERNING AVAILABILITY OF DOCUMENTS
FOR THE DEPOSITION OF JESSICA DAUER LOWRANCE

(Issued August 28, 2008)

A Joint Emergency Motion to Clarify Ruling Establishing Procedures for the Deposition of Jessica Dauer Lowrance (Joint Motion) has been submitted by Capital One Services, Inc. (Capital One), American Postal Workers Union, AFL-CIO (APWU), and the Public Representative. The Joint Motion was filed just before close of business on August 28, 2008, while the deposition of Jessica Dauer Lowrance was continuing. This deposition is being held because Ms. Lowrance will be unable to provide essential testimony after today.

The Joint Motion requests that the Postal Service be directed to allow counsel for Capital One access during the deposition to documents the Postal Service considers privileged or otherwise exempt from disclosure. The Joint Motion suggests that previous rulings, specifically P.O. Ruling Nos. C2008-3/3 and C2008-3/7 resolve this issue in their favor.

Based on the information provided in the numerous pleadings related to this deposition that have been filed in the last 2 days, it appears that counsel have agreed to appropriate protective conditions, and have already been allowed access to the types of information contained in the contested documents. Thus, the narrow issue is whether

counsel must be permitted to see actual documents memorializing the information that has already been discussed during the deposition.

Under the circumstances of an emergency deposition taken to preserve essential testimony from a witness that will no longer be available after today, I find it appropriate to require that counsel be given access to relevant documents so that an accurate and complete factual record can be developed. This decision is bolstered by the existence of protective conditions that will prevent those obtaining access to these documents from improperly disseminating information contained therein. As stated in the Joint Motion, counsel may only “use the documents in a closed proceeding under protective conditions agreed to by the parties for purposes of conducting an effective deposition.”

RULING

The Joint Emergency Motion to Clarify Ruling Establishing Procedures for the Deposition of Jessica Dauer Lowrance is granted.

Dan G. Blair
Presiding Officer