

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

COMPLAINT OF CAPITAL ONE SERVICES, INC.

Docket No. C2008-3

**MOTION OF THE UNITED STATES POSTAL SERVICE
TO STRIKE PORTIONS OF LOWRANCE DEPOSITION TRANSCRIPT
VOLUME 1, PURSUANT TO P.O. RULING NO. C2008-3/7
(September 9, 2008)**

The United States Postal Service hereby moves to strike certain portions of Volume 1 of the transcript of the deposition of Jessica Dauer Lowrance, pursuant to P.O. Ruling No. C2008-3/7. In that ruling, issued August 28, 2008, the Presiding Officer stated that counsel would have seven days from the day each transcript volume was complete to identify by page and line the questions considered objectionable and to present arguments for why answers to those questions should be stricken.¹

On August 28, 2008, the Presiding Officer issued P.O. Ruling No. C2008-3/8, identifying certain issues as falling outside the scope of the application to depose Jessica Dauer Lowrance. Volume I of the transcript of this proceeding covered the first day of Ms. Lowrance's deposition, August 27, 2008, in which a number of questions to the deponent addressed issues outside the scope of the

¹ Presiding Officer Ruling (No. C2008-3/7) on Procedural Requests Related to the Deposition of Jessica Dauer Lowrance (Aug. 28, 2008), at 3-4.

application, as clarified in the Presiding Officer's Ruling. The Postal Service hereby moves to strike such portions of the transcript.

P.O. Ruling No. C2008-3/8 indicated that the following issues should not be pursued at this deposition:

1. The existence of a NDA between the Postal Service and Capital One;
2. The negotiations or the negotiation process between Bank of America and the Postal Service prior to the signing of the Bank of America agreement;
3. Other existing or potential agreements between Bank of America and the Postal Service; and
4. Procedures utilized by Bank of America that the Postal Service accepts as fulfilling the obligations of their negotiated service agreement.²

In addition, the Presiding Officer has ruled that the issue of an Office of the Inspector General ("OIG") memorandum on read/accept rates related to the Bank of America NSA "is at best tangential" to Ms. Lowrance's deposition.³ The Presiding Officer directed the parties to brief this issue. In its response to the ruling, the Postal Service maintained that the OIG memorandum is irrelevant, privileged, and exempt from disclosure under applicable statutory and common-law standards.⁴

The Postal Service identifies the following portions of Volume I of the transcript as related to issues that should not be pursued at the deposition and moves to strike such portions:

² P.O. Ruling No. C2008-3/8 (Aug. 28, 2008), at 3.

³ P.O. Ruling No. C2008-3/7 (Aug. 28, 2008), at 2.

⁴ Response of the United States Postal Service to P.O. Ruling No. C2008-3/7, Ruling on Procedural Requests Related to the Deposition of Jessica Dauer Lowrance, PRC Docket No. C2008-3 (Sept. 4, 2008), at 2-6.

Transcript Citation	Justification for Motion to Strike
Page 83, line 2, to Page 87, line 2	Subject matter relates to negotiations of Bank of America NSA, which the Presiding Officer has ruled to be not properly addressed to the witness during this deposition.
Page 100, line 18, to Page 101, line 5	Same.
Page 108, line 14, to Page 109, line 22	Studies or analyses of Bank of America's read/accept rates are irrelevant to this proceeding. This proceeding relates to Capital One's eligibility for a functionally equivalent NSA, not to Bank of America's actual performance in any context.
Page 114, line 11, to Page 116, line 4	Postal Service incorporates by reference its arguments as to irrelevance as provided in its Response to P.O. Ruling No. C2008-3/7. ⁵
Page 139, line 23 (remainder of line after first occurrence of the word "memo")	Same.
Page 187, lines 15 to 18	Discussions between Postal Service and a third-party software provider are not relevant to this proceeding.

The Postal Service's motion to strike is narrowly tailored and relates to a handful of instances in the transcript. Of a 245-page transcript, the requested deletions would remove less than ten pages of transcript text. The Postal Service submits that this is reasonable and consistent with past rulings, and it respectfully requests that the Presiding Officer direct that these excerpts be stricken.

⁵ *Id.*

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.
Chief Counsel, Pricing and Product Support

Frank R. Heselton
Elizabeth A. Reed
Jacob D. Howley

475 L'Enfant Plaza, S.W.
Washington, D.C. 20260-1137
(202) 268-8917; Fax -6187
jacob.d.howley@usps.gov