

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

COMPLAINT OF CAPITAL ONE SERVICES, INC.

Docket No. C2008-3

**RESPONSE OF THE UNITED STATES POSTAL SERVICE
TO AMERICAN POSTAL WORKERS UNION, AFL-CIO MOTION TO COMPEL
PRODUCTION OF DOCUMENTS
(APWU/USPS-DR-1)
(September 26, 2008)**

The United States Postal Service hereby responds in opposition to the American Postal Workers Union, AFL-CIO (APWU) Motion to Compel Production of Documents (Motion), regarding document request APWU/USPS-DR-1. APWU filed APWU/USPS-DR-1 on August 26, 2008. The Postal Service filed an objection to this document request on September 5, 2008. APWU filed a motion to compel production of the documents on September 19, 2008. Pursuant to Rule 27(d) of the Commission's Rules of Practice, the Postal Service responds in opposition to the APWU motion to compel.

APWU/USPS-DR-1 states:

APWU/USPS- DR-1.

Please file at the PRC in this Docket, to make available for copying by the parties, copies of any speeches, presentations or other documents used in the past year by any Postal officials, including Mr. Donahoe, Mr. Galligan, Mr. Day, Ms. Kingsley, Ms. Mehra and their staff members, that discuss the number of participants using and/or the volume of mail bearing the Intelligent mail barcode prior to the implementation of the Bank of America NSA. These should include presentations on the topic of the IMB as well as presentations on the proposed Service Standards tracking methods that would use the IMB as part of the design.

In accord with Rule 27(d), the Postal Service hereby incorporates by reference the arguments contained its objection, centered on grounds of relevance, undue burden, and privilege, and supplements those arguments as follows.

Regarding relevancy, APWU alleges relevancy in that “If there were many mailers already adopting IMB, the ‘first adopter’ rationale relied on by the Postal Service may be questioned.” APWU’s Motion cites as “particularly illuminating” a Postal Service response to interrogatory COS/USPS-1(b), which indicated that “Bank of America assumed considerable risk in becoming the first adopter of the NSA’s requirements.” APWU’s request for production of documents does not focus on the myriad of requirements to be met by the Bank of America. It focuses only on the adoption of one requirement by many mailers, or a surrogate measure, the volume of mail bearing an IMB. This information is not relevant to assessing whether or not Capital One is similarly situated to Bank of America, or whether the Bank of America NSA and the one requested by Capital One are functionally equivalent. Furthermore, “any speeches, presentations or other documents” that “discuss the number of participants using and/or the volume of mail bearing the Intelligent mail barcode” are unlikely to be focused on those measures, and most information in those documents will not be relevant to the issues in this proceeding. Additionally, presentations on the topic of the IMB and its tracking methods are irrelevant to the issues in this proceeding.

Regarding burden, APWU alleges that the Postal Service’s objection does not describe undue burden with the particularity required by Rule 27(c), in that it does not provide estimates of cost and work hours. The burden is manifest, without these measures. The document request asks for “any speeches, presentations or other

documents used in the past year by any Postal officials” that discuss the number of participants using IMB or IMB volumes. Even if one narrows the request to the named officers of the Postal Service and their staffs, numerous speeches, presentations, or other documents used by them in the last year would be involved.¹ These documents would have to be identified, reviewed, and privileged information would have to be redacted. A substantial level of effort would be involved. Rule 27(a) states that: “In the interest of expedition and limited to information which appears reasonably calculated to lead to the discovery of admissible evidence” a participant may request production of documents. The information sought by the APWU, specifically the number of participants using IMB or IMB volumes, does not reside exclusively in speeches, presentations, or other documents used by the named officers and their staffs. Alternative discovery methods are available to APWU to request this information that would be more expedient and efficient.² A document request, therefore, is not “in the interest of expedition” under Rule 27(a), and for this reason alone, APWU’s motion to compel should be denied. Additionally, the document request imposes an undue burden on the Postal Service. The first definition of “undue” in Black’s Law Dictionary is “more than necessary”. APWU’s attempt to obtain the requested information through production of documents imposes more burden than necessary, and constitutes undue burden.

¹ APWU makes no effort whatsoever to narrow its overly broad request; the Postal Service itself reasonably narrows the request for its discussion of undue burden.

² While the alternative methods are more expedient and less burdensome, they do not avoid the objections raised by the Postal Service on other grounds.

Therefore, for the forgoing reasons, and the arguments contained in the Postal Service's objection to APWU/USPS-DR-1 incorporated herein, the Postal Service respectfully requests the commission to deny APWU's Motion.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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September 26, 2008