

RULING NO. C2008-3/29

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

Complaint of Capital One Services, Inc.

Docket No. C2008-3

PRESIDING OFFICER'S RULING GRANTING  
MOTION TO COMPEL RESPONSE TO PR/USPS-15

(Issued October 8, 2008)

The Public Representative has filed a motion to compel the Postal Service to provide a response to interrogatory PR/USPS-15.<sup>1</sup> Interrogatory PR/USPS-15 refers to a workpaper supporting the Commission's decision in Docket No. MC2007-1, and asks the Postal Service to provide a detailed explanation of any disagreement with the Commission's financial analysis, any Postal Service financial analysis (in electronic form), and any other analysis that supports the explanation and/or shows the areas of disagreement with the Commission's financial analysis.<sup>2</sup>

The Postal Service objects to providing a response based on relevance and on the grounds that the requested analysis is protected from disclosure because it is "information prepared for use in connection with proceedings under chapter 36."<sup>3</sup> See 39 U.S.C. 410(c)(4). The Postal Service argues that it is not relevant to the key issues of the Capital One case whether or not the Postal Service agrees with certain aspects

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<sup>1</sup> Public Representative Motion to Compel Response to Interrogatory to United States Postal Service (PR/USPS-15), September 24, 2008 (Motion).

<sup>2</sup> Public Representative Interrogatory to United States Postal Service (PR/USPS-15), September 3, 2008.

<sup>3</sup> Objection of the United States Postal Service to Interrogatory of Public Representative (PR/USPS-15), September 15, 2008 (Objection); Response of the United States Postal Service to Motion to Compel Response to Interrogatory of Public Representative (PR/USPS-15), October 1, 2008 (Response).

of the Commission's financial analysis of the Bank of America agreement. It contends that this goes far beyond what should be examined in this case and is not reasonably calculated to lead to the discovery of admissible evidence.

The Public Representative argues that corrections identified by the Postal Service to the Commission's Bank of America analysis would facilitate an analysis of the Capital One agreement on the same terms. He contends that this would provide credible support for the Postal Service's claim of a reduction in contribution as a basis for opposing Capital One's proposal.<sup>4</sup>

*Analysis.* The question posed by the Public Representative has changed from when the interrogatory originally was filed as a result of pleadings on the Motion to compel. This ruling considers the current tenor of the interrogatory as discussed below.

The Public Representative reframes the interrogatory in his Motion to clarify that he is not seeking "predecisional" analysis, but rather "a concrete, corrected, numerical analysis providing a current estimate of the loss of contribution from the Bank of America NSA." Motion at 3-4. This clarification changes the focus and time frame of the interrogatory. The interrogatory will be analyzed to determine whether it is "reasonably calculated to lead to admissible evidence" in light of its modified inquiry. See rule 25.

The Public Representative argues that a current financial analysis of the Bank of America agreement could shed light on the issues of similarly situated mailers and functionally equivalent agreements. This would be so even if this analysis necessarily would have to be supplemented to account for the "unquantifiable" benefits of first adopters as discussed by the Postal Service.

The Public Representative asserts that the Postal Service claims a reduction in contribution as a basis for opposing the Capital One proposal, citing the response to PR/USPS-10(a). This claim raises what may become a central issue in this docket.

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<sup>4</sup> See Response of the United States Postal Service to Interrogatory of Public Representative (PR/USPS-10), September 8, 2008.

Statements by the Postal Service indicate that to date, no analytical comparison of the two agreements has been undertaken that might support or refute such a claim. The Postal Service states that “no financial analysis has been prepared” for the Capital One proposal.<sup>5</sup> It also states that the benefits from the suite of commitments undertaken by Bank of America remain unquantified.<sup>6</sup>

The requested analysis would appear to be directly relevant to a comparison of the financial impact of the two agreements, and to support or refute a claim that the Postal Service should not enter into an agreement with Capital One on the basis of a potential loss of contribution. The Postal Service has indicated that it would view such an analysis as commercially sensitive, in which case the analysis can be provided subject to the protective conditions established in P.O. Ruling C2008-3/9. The Motion to compel is granted.

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<sup>5</sup> *Id.* See response to interrogatory PR/USPS-10(b).

<sup>6</sup> Response of the United States Postal Service to Interrogatories of Capital One Services, Inc. (COS/USPS-1-11), August 22, 2008. See response to interrogatory COS/USPS-11(A),

RULING

The Public Representative Motion to Compel Response to Interrogatory to United States Postal Service (PR/USPS-15), filed September 24, 2008, is granted.

Dan G. Blair  
Presiding Officer