

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

**COMPLAINT OF CAPITAL ONE
SERVICES, INC.**

DOCKET NO. C2008-3

**BANK OF AMERICA CORPORATION'S RESPONSE TO
RULING NUMBER C2008-3/1**

The Bank of America Corp. submits this response to the Presiding Officer's ruling in support of the compromise position that the Postal Service has advanced in this proceeding. The Postal Service's position is that if Capital One promptly files a "reasonable number of interrogatories" directed to Ms. Lowrance "concerning her personal knowledge as to the proposed Capital One NSA" (Postal Response at 3), the Postal Service will provide sworn responses by Ms. Lowrance.

We support this result. Indeed, it is our view that the Postal Service has gone further than is necessary to deal with this question because any information that Capital One may seek to secure from Ms. Lowrance – through depositions or interrogatories – is simply irrelevant to this proceeding.

Although the issues in this proceeding must be more clearly framed, the core of the Capital One complaint plainly involves a claim of discrimination under Section 403(c) of the PAEA, 39 U.S.C. § 403(c). Given the time-sensitive nature of the question of dealing with Ms. Lowrance's departure from employment with the Postal Service, we will not, in this pleading, attempt a detailed exegesis of the relevant legal standards. In general terms, however, it is clear that any claim by Capital One that it is being discriminated against must be limited to the most recent proposal made by the Postal Service to Capital One and the parties' current bargaining positions, i.e., the most recent offer or proposal that Capital One

may have made. These are matters that are within Capital One's knowledge and control and do not require any discovery on the part of the Complainant, much less the discovery of Ms. Lowrance, who has not had any decisional authority in matters involving the Capital One negotiations since November 2007. In its Emergency Motion to Amend Date of Requested Deposition to August 27, 2008, Capital One asserts that "Ms. Lowrance is an indispensable witness because she was the only other person present at disputed conversations between the Postal Service and Capital One." As the Postal Service points out, however, Ms. Lowrance was on maternity leave from May 26, 2008 until August 11, 2008; and, therefore, even if persons at the Postal Service who are not in the decisional chain of command can be considered to have information of some conceivable relevance or potential relevance to this proceeding, Ms. Lowrance plainly was not present at any conversations that took place after May 2008 and is unable to speak to the current bargaining positions, which is the only relevant issue.

In sum, discovery for Ms. Lowrance is simply not calculated to lead to information that is or will be of relevance to the outcome of this proceeding. Nonetheless, in an abundance of caution, the Postal Service has offered to provide responses to reasonable interrogatories from Capital One. Bank of America supports that outcome.

Respectfully submitted,

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