

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

COMPLAINT OF CAPITAL ONE SERVICES, INC.

Docket No. C2008-3

**OBJECTION OF THE UNITED STATES POSTAL SERVICE  
TO INTERROGATORY OF CAPITAL ONE SERVICES, INC.  
(COS/USPS-12)  
(September 2, 2008)**

In accordance with Rules 25 and 27 of the Commission's Rules of Practice and Procedure, the United States Postal Service hereby objects to Interrogatory COS/USPS-12, filed on August 22, 2008. The Postal Service objects to this interrogatory request on the grounds of relevance and undue burden. The interrogatory states:

**INTERROGATORY COS/USPS-12**

Please provide the following information with respect to Docket No. C2008-3:

- (1) a clear and concise statement of any disputed factual allegations upon which the Postal Service relies;
- (2) a clear and concise statement of any legal interpretation upon which the Postal Service relies;
- (3) explanatory detail for each material factual allegation in the Complaint that the Postal Service denied in its Answer, filed July 21, 2008, and, for any denial based on information and belief, an explanation as to why such facts could not reasonably be ascertained by the Postal Service prior to filing the Answer;
- (4) every defense relied upon, including the nature of any defense and factual allegations and law upon which the Postal Service relies. Please provide and separate identify all affirmative defenses.
- (5) a statement of the nature of the evidentiary support that the Postal Service has or expects to obtain to support its factual allegations and defenses.

In short, COS/USPS-12 asks the Postal Service to provide a detailed summary or preview of every piece of testimony it may possibly file, and every legal argument it might make in brief or at any other stage of this proceeding, despite the fact that no procedural schedule has yet been established. The Postal Service objects to this interrogatory on the grounds of relevance and undue burden, but also further suggests that this interrogatory should not require a response because it subverts well-established procedures typically utilized in complaint proceedings, and seeks to shift the burden of proof in this docket onto the Postal Service.

This interrogatory is not reasonably calculated to lead to the discovery of admissible evidence. The Postal Service's litigation strategy,<sup>1</sup> legal interpretations, and any factual support it plans to rely upon in this case are not, on their own, admissible evidence in this proceeding. Moreover, this interrogatory is so broad that it cannot be considered "reasonably calculated" to lead to any admissible evidence. Clearly, this interrogatory reflects Capital One's intent<sup>2</sup> to anticipate any argument the Postal Service might make in this case and to shift the burden of proof onto the Postal Service. The burden in any complaint case lies with the complainant, not with the Postal Service. Capital One should not be permitted to bypass the testimony, hearing, and briefing stage via this interrogatory. Thus, the Postal Service objects to COS/USPS-12 on the grounds of relevance.

---

<sup>1</sup> Including, but not limited to, plans for discovery directed toward Capital One, plans for testimony (if any), plans for lines of cross-examination (if hearings on Capital One's testimony in support of its Complaint ultimately take place).

The Postal Service also objects to this interrogatory on the grounds of undue burden. Responding to this interrogatory would require the Postal Service to formulate its possible testimony and outline any legal briefs it may file immediately, in the midst of the discovery process, and even prior to the establishment of a procedural schedule in this Docket. Doing so would require countless additional workhours, involving a number of postal employees. The Postal Service would also have to make its arguments before Capital One would even file its own testimony in support of its Complaint. This interrogatory would not only place an undue burden on the Postal Service in terms of the resources required to respond, but also, as discussed above, because the interrogatory effectively subverts well-established procedures typically utilized in complaint proceedings and seeks to shift the burden of proof in this docket onto the Postal Service.

Thus, for the foregoing reasons, the Postal Service objects to COS/USPS-12.

---

<sup>2</sup> This intent is also reflected in Capital One's proposed procedural schedule. See Response of the United States Postal Service to Motion of Capital One Services, Inc. to Propose Procedural Schedule, Docket No. C2008-3, August 26, 2008.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

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

Elizabeth A. Reed

475 L'Enfant Plaza, S.W.  
Washington, D.C. 20260-1135  
(202) 268-3179; Fax -6187  
September 2, 2008