

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 PUBLIC REPRESENTATIVE MOTION TO COMPEL  
RESPONSES TO INTERROGATORIES  
(PR/USPS-2 AND 4)  
(September 2, 2008)**

The United States Postal Service hereby responds to the Public Representative Motion to Compel Responses to Interrogatories to United States Postal Service, filed on August 26, 2008, regarding the following interrogatories: PR/USPS-2 and 4. The Postal Service herein incorporates its arguments presented in its Objection.<sup>1</sup> The objectionable interrogatories are reprinted verbatim below, and are followed by the Postal Service's response to the Public Representative's Motion to Compel.

**PR/USPS-2.** Please provide the average read and accept rate for Bank of America's First-Class Mail and Standard Mail since implementation of the Bank of America NSA.

**PR/USPS-4.** For Fiscal Years 2006, 2007 and 2008, please provide the average read and accept rate for Capital One's First-Class Mail and Standard Mail.

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<sup>1</sup> Objection of the United States Postal Service to Interrogatories of Public Representative (PR/USPS-2 and 4), August 21, 2008.

The material requested in PR/USPS-2 and 4 is highly confidential and commercially sensitive. The Postal Service is currently subject to Non-Disclosure Agreements (NDAs) with both Bank of America and Capital One. The NDA between the Postal Service and Bank of America (to which one vendor of Bank of America is also a party) protects the requested information. Disclosure of the requested data could give competitors of both Bank of America and its vendors intelligence that would enable them to assess their adoption of, and capabilities with respect to, new technologies. Disclosure would thus harm the Postal Service and Bank of America, along with its vendors, and would likely deter future NSA partners from engaging in NSAs with the Postal Service. Hence, the Postal Service opposes release of these data. Furthermore, Bank of America's performance data do not have any bearing on Capital One's performance, and hence do not inform the issues in this case.

Additionally, revealing Capital One's data could undermine the Postal Service's negotiating position regarding a functionally equivalent NSA with Capital One. If Capital One becomes aware of the Postal Service's data concerning its read and accept rates, Capital One could gain leverage in any negotiation with the Postal Service over a functionally equivalent NSA, as it would be able to make predictions of the Postal Service's economic valuation of the NSA. This, in turn, could forestall the possibility of the parties reaching an agreement.

The Postal Service submits that this docket should not be used by participants to obtain data related to Bank of America and Capital One, and thereby offer ideas on what should be the negotiating positions of the Postal Service or Capital One. The complaint process should not allow for any participant to substitute its judgment for that

of the Postal Service and a potential NSA partner like Capital One. The NSA negotiation process is confidential, and should not be subverted via the discovery process in the instant docket.

Therefore, for the foregoing reasons, the Postal Service respectfully opposes the Public Representative's Motion to Compel regarding interrogatories PR/USPS-2 and 4.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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