

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

COMPLAINT OF CAPITAL ONE  
SERVICES, INC.

Docket No. C2008-\_\_\_\_\_

**DECLARATION OF BEN LAMM**

**I. INTRODUCTION**

A. Professional Background and Responsibilities

1. I am Director of Direct Marketing Operations for Capital One Services, Inc. ("Capital One" or the "Company").

2. Based in Richmond, Virginia, I am responsible for Capital One's domestic direct marketing operations, including creative development, multi-channel pre-media, direct mail manufacturing, delivery, and supplier management. In this role, I lead and coordinate postal, supplier management, and environmental sustainability efforts within Capital One.

3. I also have oversight responsibility for the Company's relationship with the Postal Service, and I frequently interact with Postal Service employees at all levels.

4. I am familiar with Capital One's mailing practices and general mail profile, as well as various initiatives and pilot programs to test new technologies.

5. Before assuming my current position in 2005, I led portions of internal and external operations for Capital One's statement, letter, and credit card production department. Prior to joining Capital One in 1999, I was an intelligence officer in the U.S. Army.

6. I hold a Bachelor of Science degree in Mechanical Engineering from Pennsylvania State University.

B. Purpose of this Declaration

7. This declaration sets forth the facts underlying Capital One's Complaint against the United States Postal Service (the "Postal Service"). It describes Capital One's efforts to obtain the same kind of Negotiated Services Agreement ("NSA") that the Postal Service offered to Bank of America Corporation ("Bank of America") in Docket No. MC2007-1. It further describes communications with the Postal Service on this issue, the Postal Service's ultimate refusal to offer us the same deal, and the impact of that refusal on Capital One.

**II. CAPITAL ONE**

8. Established in 1995 and headquartered in McLean, Virginia, Capital One is a preeminent financial services corporation and one of the Nation's most recognized brands, offering credit cards, home and auto loans, banking and personal savings products in the United States, United Kingdom, and Canada. Capital One had revenues of over \$15 billion in fiscal year 2006 and almost 32,000 employees. The Company maintains more than 700 banking locations and services over 50 million customer accounts.

9. Capital One's business—which includes direct mail marketing of credit cards—relies heavily on the Postal Service. In 2006, Capital One was the Postal Service's fourth largest customer and single largest generator of First-Class Mail. Capital One sent approximately 1.2 billion First-Class Mail letters and 1.4 billion Standard Mail letters during that Postal Service fiscal year.

10. Our volumes from October 2006 to August 2007 were approximately 434 million (First-Class Mail operational), 627 million (First-Class Mail marketing), and 1.2 billion (Standard Mail).

11. Bank of America is one of our primary competitors.

12. Capital One is an industry leader and has driven change in the postal industry. For example, the Postal Service and Capital One negotiated, won approval for, and implemented the first successful NSA in 2003. Capital One also worked with the Postal Service to create and implement the National Mail Piece Design Approval Process in March, 2004.

13. Capital One continues to work with the Postal Service on a variety of matters, participating in various events, workshops, and symposia with the Postal Service and the broader mailing industry, particularly in the area of new mail processing technologies.

14. In recent years, Capital One has been engaged with the Postal Service in discrete voluntary pilot programs to help test new technologies, and it participated in some of the Seamless Acceptance pilot tests from November 2007 through March 2008.

### **III. DISCUSSIONS WITH THE POSTAL SERVICE**

15. Around February, 2007, shortly after the filing for regulatory approval of the Bank of America NSA, Capital One indicated to the USPS Pricing Strategy Group its desire to enter into an NSA that was similar to the Bank of America NSA. Given the Postal Service's obligation to offer functionally equivalent NSAs, confirmed by the Postal Service's commitments in Docket No. MC2007-1, Capital One did not intervene in, or otherwise oppose, the Bank of America NSA.

16. On January 31, 2008—about one month after the Board of Governors' approval of the Bank of America NSA—Niki Howard, Supplier Manager of Capital One, spoke with Jessica Lowrance, Acting Manager of Postal Service Pricing Strategy. Ms. Howard raised the possibility of a Bank of America-type NSA, and Ms. Lowrance stated that Capital One would not be able to use the industry-average rate baselines offered to Bank of America.

17. On April 2, 2008, Ms. Howard spoke to Ms. Lowrance by telephone and again raised the Bank of America NSA, asking Ms. Lowrance if she was sure that Capital One could not do something similar.

18. Ms. Lowrance replied that her department "was not supporting any NSAs like the Bank of America filing" and that they were only interested in doing volume-based deals.

19. On April 17, 2008, I personally spoke to Stephen Kearney, Vice President of Pricing and Classification for the Postal Service, over the phone and raised our concern that we had been seeking an NSA similar to the Bank of America NSA for a

long time, but had been told that we would not be able to use the same industry-average baselines offered to Bank of America.

20. Mr. Kearney mentioned the controversy surrounding the use of the 1998 industry-average baselines for the Bank of America NSA. He told me that, if we wanted an NSA, we could not use the same baselines. I explained that this created an unfair advantage for Bank of America and put Capital One at a serious competitive disadvantage.

21. When Mr. Kearney argued that Bank of America was helping to lead the industry in mail processing improvements, I reminded him that Capital One was also an industry leader. Mr. Kearney replied that he recognized the leadership role that Capital One had played and said “thank you” for that leadership.

22. Mr. Kearney reiterated the position that Capital One could not receive the same industry-average baselines and indicated that, if Capital One believed it was being treated unfairly, it could file a complaint with the Postal Regulatory Commission.

23. Following that conversation, I worked with David Hummelberg, Managing Vice President of Capital One, to draft a letter that we sent to Mr. Kearney by mail and email on May 15, 2008 (Attachment A to this Declaration). The letter stated that “you indicated that Capital One cannot get an NSA like the Bank of America NSA. As I’m sure you’ll understand, that places us at a competitive disadvantage to Bank of America.” The letter further stated that, after a careful review of the Bank of America NSA, Capital One stood “ready, willing, and able” to enter into and comply with a new contract that “uses the identical language and terms as the Bank of America agreement with only, the name, address, and mail volumes (in paragraph 1.A) changed.”

24. Mr. Kearney responded by letter, dated May 27, 2008 (Attachment B), stating that it was, in fact, willing to negotiate a functionally equivalent NSA with Capital One, but that “a new Capital One NSA would not be *identical* to the Bank of America NSA. Certain terms and conditions would necessarily have to be changed, as the situation regarding the factors in the Bank of America agreement is different today.”

25. Capital One received that letter on May 30, and I sent a second letter and email to Mr. Kearny shortly thereafter (Attachment C).

26. That letter attached a draft NSA identical to the NSA that the Postal Service signed with Bank of America, except for the substitution of Capital One’s name throughout and the description of Capital One’s mail volumes in paragraph 1.A. (Attachment C). The letter noted that “you indicated in your letter that ‘[c]ertain terms and conditions would necessarily have to be changed,’” and then asked Mr. Kearney to specify on the attached draft what terms and conditions would need to be changed. The letter also asked that the Postal Service “indicate specifically [the] exact changes you will require to Paragraphs IV(C)(1)-(3)(a); IV(D)(1)-(2); IV(F)(1)-(3)(a); and IV(G)(1)-(2)—the paragraphs that prescribe the discount baselines and schedules under the terms of the Bank of America NSA.

27. Mr. Kearney responded by letter and email, dated June 4, 2008 (Attachment D). Although the letter reiterated the Postal Service’s offer to negotiate a “functionally equivalent” NSA with Capital One, the Postal Service refused to mark up the draft or to specify necessary changes to the incentive paragraphs, insisting on a face-to-face meeting instead.

28. I then requested a meeting at Postal Service headquarters. Accordingly, I and other representatives from Capital One met with Mr. Kearney and other representatives of the Postal Service at Postal Service Headquarters on June 9, 2008.

29. During that meeting, Mr. Kearney explicitly stated that the Postal Service would not offer the same NSA to Capital One that it offered to Bank of America, and, more specifically, that, rather than the 1998 industry-average baselines offered to Bank of America, Capital One would have to use mailer-specific baselines. In addition, the per-piece discount rates would have to be reduced to reflect that Capital One was not the "first" adopter. Mr. Kearney argued that the changes in the baselines and discount schedules were justified by changes in circumstances. When asked whether those changes had occurred since the date of implementation (April 1, 2008), he said that they had not.

30. If there is any benefit to the Postal Service from Bank of America's adoption of the technologies specified in its NSA, those same benefits should accrue if Capital One is given the opportunity to participate in a similar NSA.

31. If not allowed that opportunity, however, our Company is placed at a real competitive disadvantage, making it relatively more expensive for us to conduct our business by millions of dollars.

32. The Company stands ready, willing, and able to enter into an NSA with the Postal Service on the same substantive terms as the Bank of America NSA.

I declare under penalty of perjury that the following is true and correct,  
this 19th day of June, 2008.

A handwritten signature in black ink, appearing to read "Ben Lamm", with a long horizontal stroke extending to the right.

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Ben Lamm