

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

COMPLAINT OF CAPITAL ONE  
SERVICES, INC.

Docket No. C2008-3

**RESPONSE OF CAPITAL ONE SERVICES, INC. TO THE POSTAL  
SERVICE'S MOTION FOR CLARIFICATION, OR IN THE ALTERNATIVE, FOR  
EXTENSION OF TIME FOR SUBMISSION OF PRIVILEGE LOGS**

(September 3, 2008)

On September 2, 2008, the Postal Service filed a Motion for Clarification, or in the Alternative, for Extension of Time Regarding P.O. Ruling No. C2008-3/3 with Respect to Deadline for Submission of Privilege Logs Arising from Deposition of Jessica Dauer Lowrance (Motion for Extension of Time). The Postal Service requested additional time to September 5, 2008, to submit its privilege log, stating:

Given the events of last week, counsel for the Postal Service was unable to make any progress on preparing a privilege log during the deposition, which concluded past midnight on August 29, 2008.

The Postal Service also unilaterally asserts that:

“[T]he Postal Service **may seek additional time to supplement its privilege log**, particularly pertaining to e-mails and other electronic records that must be examined in detail.”<sup>1</sup>

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<sup>1</sup> In fact, e-mail and electronic records were specifically requested in the original document requests of August 8, 2008, and in the Application for Authorization to Depose Jessica D. Lowrance on August 21, 2008. Despite P.O. Ruling No. C2008-3/3, no emails were produced for the deposition although the witness repeatedly referred to hundreds of emails.

Although Capital One does not object to an extension of time until Friday, September 5, 2008, as requested by the Postal Service, it respectfully requests that the Presiding Officer rule that ***the privilege log be complete at that time.***

There is no excuse for the Postal Service's inability to provide a complete privilege log by September 5, 2008:

- The Postal Service received Document Requests COS/USPS-DR-1-17 on August 8, 2008. Those requests included detailed instructions for a privilege log.
- Capital One expressly mentioned its need for a privilege log at the pre-hearing conference on August 14, 2008, in order to evaluate claims of privilege.
- Capital One's Motion to Strike and for Clarification of Procedures, filed on August 19, 2008, articulated the need for privilege logs and specific objections. *Id.* at 9-11.
- P.O. Ruling No. C2008-3/3 made clear that a privilege log was to be filed within 7 days.
- Commission Rule 27(c) requires objections to be made with specificity, and before filing its Objection of the Postal Service to Document Requests of Capital One COS/USPS-DR-1-17, on August 19, 2008, the Postal Service should have reviewed responsive documents in order to assert specific objections and privilege claims.

The Postal Service's choice to rely on assertions of general objections and broad privileges to avoid even starting the document review process contravenes both the Presiding Officer's Rulings and the Commission's discovery rules. The Postal Service refused to produce a single document on August 22, 2008, the due date for responses to COS/USPS-DR-1-17, and on the first day of the deposition of Jessica Lowrance, 19 days after receiving the document requests, it became clear that the Postal Service had just begun the day before to cull

responsive documents and had interpreted the request for documents from Ms. Lowrance's "offices" to apply only to documents in her temporary cubicle rather than in her previous offices.

Finally, as discussed in Capital One's Motion for Sanctions and Supplemental Motion for Sanctions, filed on August 27, 2008, and September 3, 2008, the Postal Service should not be allowed to assert as an excuse the time-consuming nature of the deposition because it was the Postal Service that created the 12-hour delay.

In P.O. Ruling No. C2008-3/11, the Presiding Officer granted an extension of time to Capital One for filing of Motions to Compel concerning interrogatories COS/USPS-1-11 and document requests COS/USPS-DR-1-17 (September 2, 2008). Because this ruling was based on the unavailability of the deposition transcript, the due date was set at 7 days from the date the transcript became available. Capital One had assumed that a complete privilege log would be filed by September 3, 2008, so that it could prepare its Motion to Compel. If the Postal Service is allowed an extension of time to file a privilege log, Capital One respectfully requests that:

- The Commission set the due date for a Motion to Compel concerning interrogatories COS/USPS-1-11 and document requests COS/USPS-DR-1-17 at 7 days from the submission of the Postal Service's complete privilege log or the availability of a complete transcript of the Lowrance deposition, whichever is later.

- The Presiding Officer specifically rule that the Postal Service file a “complete” privilege log on the due date, including electronic documents.<sup>2</sup>

Respectfully submitted,

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<sup>2</sup> To the extent that the Presiding Officer deems it necessary, Capital One also requests that the Presiding Officer reiterate its ruling that, "the Postal Service may not identify a whole page as privileged or exempt and non-exempt information, but must redact only the information it claims to be privileged or exempt." P.O. Ruling C2008-3/3 at 4.