

RULING NO. C2008-3/28

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Complaint of Capital One Services, Inc.

Docket No. C2008-3

PRESIDING OFFICER'S RULING
DENYING MOTIONS TO COMPEL
RESPONSES TO COS/USPS-12 AND COS/USPS-DR-18

(Issued October 1, 2008)

Capital One Services, Inc. (Capital One) has filed motions to compel the Postal Service to provide responses to interrogatory COS/USPS-12 and document request COS/USPS-DR-18.¹ Interrogatory COS/USPS-12 asks:

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.

¹ Motion of Capital One Services, Inc. to Compel Response to Interrogatory COS/USPS-12, September 16, 2008, and Motion of Capital One Services, Inc. to Compel Response to Document Request COS/USPS-DR-18, September 16, 2008 (Motions).

Document request COS/USPS-DR-18 asks:

Please provide all documents that relate to or support any portion of your response to Interrogatory COS/USPS-12.

Capital One asserts that the above requests solicit the same type of information that the Commission proposes to be available at the outset of complaint proceedings as described in the ongoing rulemaking docket on complaint procedures. See, Docket No. RM2008-3. It contends that the rulemaking docket was initiated to bring the complaint procedures into conformance with the new objectives of the Postal Accountability and Enhancement Act. Capital One argues that granting the Motions, and thus following these new procedures, will allow the case to proceed with greater expedition and efficiency.

The Postal Service filed timely objections to the interrogatory and the document request,² and responses to the Motions.³ The Postal Service bases its objections on relevance and undue burden, and in the case of the document request adds commercial sensitivity. The Postal Service also contends that the information requests subvert well established complaint procedures to the extent of shifting the burden of proof in this docket onto the Postal Service.

Early in this proceeding, it was determined that the established procedures for hearing complaints will be followed. Tr. 1/14. Capital One argues for implementing new procedures that now are being considered in a rulemaking. Comments have not been received in the rulemaking, and no decision has been made on implementation of the

² Objection of the United States Postal Service to Interrogatory of Capital One Services, Inc. (COS/USPS-12), September 2, 2008; and Objection of the United States Postal Service to Document Request of Capital One Services, Inc. (COS/USPS-DR-18), September 2, 2008.

³ Response of the United States Postal Service to Motion to Compel Response to Interrogatory of Capital One Services, Inc. (COS/USPS-12), September 23, 2008; and Response of the United States Postal Service to Motion to Compel Response to Document Request of Capital One Services, Inc. (COS/USPS-DR-18), September 23, 2008.

proposed rules. Persuasive justification has not been presented to deviate from the established procedures.⁴ The Motions to compel are denied.

RULING

1. The Motion of Capital One Services, Inc. to Compel Response to Interrogatory COS/USPS-12, filed September 16, 2008, is denied.
2. The Motion of Capital One Services, Inc. to Compel Responses to Document Request COS/USPS-DR-18, filed September 16, 2008, is denied.

Dan G. Blair
Presiding Officer

⁴ The Postal Service's objections of relevance, undue burden, and commercial sensitivity do not form a basis for this ruling.