

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  
EMERGENCY MOTION OF CAPITAL ONE SERVICES, INC. TO AMEND DATE OF  
REQUESTED DEPOSITION TO AUGUST 27, 2008**  
(August 25, 2008)

The United States Postal Service hereby responds to the Emergency Motion of Capital One Services, Inc. to Amend Date of Requested Deposition to August 27, 2008, which was filed on August 25, 2008. The Postal Service reiterates its position, as discussed in its pleading of August, 22, 2008, that written interrogatories with a due date of August 29, 2008, would be preferable to holding a deposition at this stage of the proceedings.<sup>1</sup>

Capital One, in its Emergency Motion, continues to erroneously assert that Ms. Lowrance is an "indispensable witness." Ms. Lowrance was no longer Acting Manager, Pricing Strategy, after November 28, 2007, and the cited discussions with Ms. Howard of Capital One occurred after this date, when Ms. Lowrance was a staff economist.

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<sup>1</sup> The Postal Service also herein incorporates by reference the arguments presented in its pleading, "Response of the United States Postal Service to Application of Capital One Services, Inc. for Authorization to Depose Jessica Dauer Lowrance," filed August 22, 2008.

These informal discussions between Ms. Howard and Ms. Lowrance, not acting in a managerial capacity, all preceded more recent, and more formal, NSA communications between the Postal Service and Capital One that actually involved postal management.<sup>2</sup>

Moreover, during the most recent communications between the Postal Service and Capital One, Ms. Lowrance was on leave,<sup>3</sup> and thus had no opportunity to participate in any internal discussions regarding the communications that occurred prior to the filing of Capital One's Complaint. Ms. Lowrance has no personal knowledge of the most recent discussions between the parties, or any alleged *ad hoc* decisions pertaining to NSAs that allegedly may have been made during that time period. The Postal Service fails to see how informal discussions between a staff economist and a Capital One representative, which have been superseded by more recent communications involving postal management that squarely address the Postal Service's position, are "essential to preserve critical testimony that goes to the heart of Capital One's complaint," as asserted by Capital One.<sup>4</sup>

Additionally, the Postal Service strongly denies Capital One's allegation in its pleading that the Postal Service somehow ignored "a good faith obligation" and failed to timely inform Capital One of Ms. Lowrance's departure. Counsel for the Postal Service became aware of the potential for Ms. Lowrance's departure on Wednesday, August 20, 2008. This departure was not confirmed until August 21, 2008, the same day that

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<sup>2</sup> Capital One also erroneously asserts that "no replacement for Ms. Lowrance was appointed as manager of Pricing Strategy until the summer of 2008." In reality, Ms. Lowrance was Acting Manager until November 28, 2007, and at that time the position of Manager, Pricing Strategy was again assumed by the former Manager, Pricing Strategy, who had temporarily been serving in an Acting Vice President role.

<sup>3</sup> Ms. Lowrance was on leave from May 26, 2008 until August 11, 2008.

Capital One filed its Application to depose Ms. Lowrance.<sup>5</sup> On Friday, August 22, 2008, Ms. Lowrance's actual separation date of August 29, 2008, was confirmed by Postal Service counsel. That same day, the Postal Service filed its response to Capital One's Application to apprise Capital One, the Commission, and interested parties of Ms. Lowrance's departure date. Therefore, Capital One's suggestion that the Postal Service somehow intentionally sought to "run out the clock" with respect to Ms. Lowrance's departure is without merit.<sup>6</sup>

In sum, the Postal Service restates its position that there is no need for holding a deposition of Ms. Lowrance at this stage in the proceeding. Discovery in this Docket has only just begun, and issues have not yet been limited. Moreover, the Postal Service's objections to Capital One's document requests (COS/USPS-DR-1-17) are still outstanding.<sup>7</sup> Capital One should not be allowed to compel the production of documents still in dispute by demanding a deposition of Ms. Lowrance. And as discussed above, Ms. Lowrance should not be considered "indispensable" to the key issues in this proceeding. Finally, the Postal Service reiterates its position that it supports an alternative approach, in which it will respond by this Friday, August 29,

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<sup>4</sup> Emergency Motion of Capital One Services, Inc. to Amend Date of Requested Deposition to August 27, 2008 (August 25, 2008).

<sup>5</sup> In fact, undersigned counsel only became aware of the online announcement of Ms. Lowrance's new position after reading Capital One's pleading.

<sup>6</sup> Additionally, a postal employee's end date of employment is protected by the Privacy Act, so Capital One lacks any basis to assert entitlement to that information before it becomes public.

<sup>7</sup> Indeed, despite the arguments put forth by Capital One in its Emergency Motion, Capital One has yet to file a Motion to Compel regarding any discovery request to date.

2008, to interrogatories directed to Ms. Lowrance. The Postal Service submits that this approach is preferable for all parties involved.<sup>8</sup>

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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<sup>8</sup> The Postal Service is also open to other alternatives, which might provide for an initial round of responses due earlier this week, and responses to follow-up due by Friday, August 29, 2008, to facilitate the resolution of this matter prior to Ms. Lowrance's departure from the Postal Service.