

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

COMPLAINT OF CAPITAL ONE SERVICES, INC.

Docket No. C2008-3

**OBJECTION OF THE UNITED STATES POSTAL SERVICE
TO DOCUMENT REQUEST OF CAPITAL ONE SERVICES, INC.
(COS/USPS-DR-22)
(September 18, 2008)**

In accordance with Rules 25 and 27 of the Commission's Rules of Practice and Procedure, the United States Postal Service hereby objects to Document Request COS/USPS-DR-22, filed on September 8, 2008. The Postal Service objects to this document request, which is stated verbatim below, on the grounds of commercial sensitivity, privilege, and because the documents are protected from disclosure under 39 U.S.C. § 410(c)(4).

DOCUMENT REQUEST COS/USPS-DR-22

With respect to any meeting of the USPS Board of Governors which included discussions or presentations relating to the Bank of America NSA or NSAs that may be functionally equivalent to the Bank of America NSA, including, but not limited to, the Board of Governors meetings on or around December 5, 2006, November 15, 2007, and December 10, 2007, please provide:

- A. All electronic or hard copy transcripts or recordings, including minutes, audiotapes, videotapes, and other documents (as defined in the Interrogatories of Capital One Services, Inc., filed August 8, 2008). Please redact any portions that do not relate to the Bank of America NSA, to functionally equivalent NSAs, or to NSAs in general.
- B. All Powerpoint and slide presentations, handouts, memoranda, briefing packages, reports, cover memos, and other documents provided to the Board of Governors prior to or during said meetings that relate to the Bank of America NSA or NSAs that may be functionally equivalent to the Bank of America NSA.

- C. All notes or other documents of Postal Service employees who attended said Board of Governors meetings that memorialize impressions, presentations, or discussions at said meetings, relating to the Bank of America NSA or NSAs that may be functionally equivalent to the Bank of America NSA.

The Postal Service objects to the above-referenced document requests on the grounds of commercial sensitivity. The transcripts, recordings, and meeting notes associated with meetings of the Postal Service Board of Governors may contain a variety of highly confidential and commercially sensitive information. In addition, this document request encompasses presentations and financial analyses that contain commercially sensitive data. Moreover, the documents requested by COS/USPS-DR-22 are not the sort of documents which private firms would normally disclose under good business practice. Therefore, the Postal Service objects to this document request on the grounds of commercial sensitivity.

Furthermore, a number of the documents implicated by COS/USPS-DR-22 are protected from disclosure based on the attorney-client privilege, work product privilege, and deliberative process privilege. Certain documents prepared by postal attorneys to advise the Governors regarding the Bank of America NSA must be protected, in full, under the attorney-client privilege or attorney work product privilege. These documents do not contain non-privileged or non-exempt material that could be reasonably segregated from the protected information, and thus susceptible to redaction. Also, many of the documents requested contain information that is predecisional, and therefore protected from disclosure by the deliberative process privilege. As the Presiding Officer noted in Docket No. R97-1, the deliberative process privilege safeguards predecisional deliberations, thereby encouraging intra-agency candor and

enabling agency decision-makers to fully consider all relevant legal and policy issues without fear of “premature disclosure.” P.O. Ruling R97-1/60 at 3. Any disclosure, even under protective conditions, will not sufficiently protect the integrity of the decision-making processes at issue. Therefore, the Postal Service objects to the above-referenced document request on the grounds of privilege.

Finally, this document request is clearly aimed at Postal Service documents produced between the issuance of the Commission’s Recommended Decision and the Decision of the Governors of the Postal Service, and is inextricably linked to the internal deliberations of the Governors. Thus, the Postal Service objects on the grounds that the requested documents are protected from disclosure under 39 U.S.C. § 410(c)(4). As the instant document request itself indicates, the materials at issue are those that assisted the Governors on deciding how to act on the Commission’s Recommended Decision, in accordance with the Governors’ extant authority under former 39 U.S.C. § 3625. These documents constitute “information prepared for use in connection with proceedings under chapter 36 of [Title 39, U.S. Code]” and are precisely the kind of documents protected from public disclosure requirements under 39 U.S.C. § 410(c)(4). Thus, the Postal Service objects to this document request on the grounds that the requested documents are protected from disclosure under 39 U.S.C. § 410(c)(4).

Therefore, for the foregoing reasons, the Postal Service respectfully objects to COS/USPS-DR-22.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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