

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

Complaint of Capital One Services, Inc.

Docket No. C2008-3

RULING ON PROCEDURAL REQUESTS RELATED TO THE
DEPOSITION OF JESSICA DAUER LOWRANCE

(Issued August 28, 2008)

A number of pleadings filed immediately upon conclusion of the first day of the deposition of Jessica Dauer Lowrance raise procedural issues.

An Emergency Motion of the American Postal Workers Union, AFL-CIO to Clarify Procedures for Closed Deposition of Jessica Dauer Lowrance, filed August 28, 2008, requests confirmation that counsel signing an appropriate confidentiality agreement will be permitted to attend any closed portion of the deposition. The Postal Service does not oppose this clarification.¹

A separate Motion of the American Postal Workers Union, AFL-CIO to Compel Production of Documents by USPS to Postpone Deposition of Jessica Dauer Lowrance Until Friday, August 29, 2008, at 9:30 a.m. and to Provide APWU Time to Ask Questions of Ms. Lowrance, filed August 28, 2008, raises a variety of issues. First, it

¹ Response of the United States Postal Service to P.O. Ruling No. C2008-3/6, Ruling Scheduling Additional Appearance, August 28, 2008, at 2.

requests a further order directing the Postal Service to provide relevant documents, noting that P.O. Ruling No. C2008-3/3 already put the Postal Service under obligation to provide these documents. See *also*, the similar request by Capital One Services, Inc. (Capital One) in its Fourth Emergency Motion to Clarify Ruling Establishing Procedures for the Deposition of Jessica Dauer Lowrance, August 28, 2008, at 1.

Ruling C2008-3/3 is reaffirmed, and the Postal Service is directed to provide the requested documents for use during the deposition. A good faith effort must be made to produce all such documents by 12:00 noon on August 28, 2008. If such documents are not available by that time, I will consider further requests for alternative relief.

Additionally, counsel for the Postal Service is charged with the responsibility for assuring that none of the documents which might be covered by the initial 17 document requests submitted by Capital One are destroyed or lost as a result of the separation of Ms. Lowrance from the Postal Service. Particular attention should be given to assuring that items not be lost from her work computer.

American Postal Workers Union, AFL-CIO (APWU) also seeks an "OIG Report On Read/Accept Rates Related to the Bank of America NSA". This issue is at best tangential to testimony being provided by Ms. Lowrance. Participants will have until September 4, 2008 to provide responses to this motion.

APWU requests that Ms. Lowrance be scheduled to appear again on Friday, August 29, 2008, and that APWU be allowed one hour of deposition time separate from the 7 hours allotted for questioning of Ms. Lowrance by Capital One. The Postal Service opposes any extension of the deposition beyond 7 hours. *Id.* It also opposes any ruling requiring Ms. Lowrance to appear on August 29, 2008, contending that she

has duties that must be performed before the conclusion of her last day as a Postal Service employee.

This deposition has proven to be highly contentious. Capital One has already submitted a Motion for Sanctions Under Rule 25(c) Against the United States Postal Service, filed August 28, 2008,² and a Fourth Emergency Motion to Clarify Ruling Establishing Procedures for the Deposition of Jessica Dauer Lowrance, filed August 28, 2008, which seeks, among other things, to have the Presiding Officer attend the deposition. It appears that more time has been spent on argument from counsel than on collecting testimony.

I will not, at this time, schedule another day of this deposition. However, I will grant APWU's request for one hour of time to question Ms. Lowrance. There should be ample time to complete this questioning today. While counsel must have the opportunity to represent the client, counsel must avoid unnecessary argument. This emergency deposition was scheduled to preserve testimony from a witness who soon will be unavailable.

If a question is posed that counsel finds objectionable, he or she may interpose an objection by identifying the nature of the objection. The witness will then answer the question. Questions giving rise to objections based on privilege or sensitive business information will be deferred to the closed session. When the transcripts are complete, counsel will have 7 days to review them, identify by page and line the questions considered objectionable and prepare a motion presenting argument why answers to

² No action on this motion will be taken at this time. Responses are due September 4, 2008.

each of those questions should be stricken. I will allow 7 days for responses to such a motion, and rule at that time.

RULING

1. The deposition of Jessica Dauer Lowrance will be continued on August 28, 2008 as described in the body of this Ruling.
2. The Postal Service shall assure that relevant documents are not lost as a result of the separation of Ms. Lowrance from the Postal Service as discussed in the body of this Ruling.

Dan G. Blair
Presiding Officer