

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  
APPLICATION OF CAPITAL ONE SERVICES, INC. FOR  
AUTHORIZATION TO DEPOSE JESSICA DAUER LOWRANCE**  
(August 22, 2008)

The United States Postal Service hereby responds to the Application of Capital One Services, Inc. ("Capital One") for Authorization to Depose Jessica Dauer Lowrance of the United States Postal Service, which was filed on August 21, 2008. In that pleading, Capital One requests a deposition of Ms. Lowrance on September 8, 2008 at 10:00 AM, citing Ms. Lowrance's imminent departure from the Postal Service.

Ms. Lowrance's actual separation date from the Postal Service will be Friday, August 29, 2008. As such, she will no longer be able to testify in a hearing or deposition on behalf of the Postal Service after that date, because she will not be an employee of the United States Postal Service and will be employed by the Association for Postal Commerce. However, the Postal Service recognizes that there is only a short time remaining on Ms. Lowrance's employment with the Postal Service, and endeavors to reach a compromise regarding this matter that will satisfy the parties and the

Commission. To that end, and given the time-sensitive nature of this matter, the Postal Service is today providing its response to Capital One's Application.

The Postal Service submits that preparing Ms. Lowrance for a deposition in less than one week would be premature. Proceedings in this Docket have only just begun, and the issues in this case have not yet been narrowed through the discovery process. Thus, it would be difficult for the Postal Service to adequately prepare Ms. Lowrance to address the potential wide range of issues that might come up at a deposition.

Moreover, Capital One's request includes "any documents [Ms. Lowrance] prepared, reviewed, or has on file (hard copy or electronic) that are responsive to Capital One's Document Requests COS/USPS-1-17, filed August 8, 2008." These document requests are subject to a pending objection by the Postal Service, which was recently filed on August 19, 2008.<sup>1</sup> The Postal Service should not be required to produce documents at a deposition that are subject to an ongoing discovery dispute.

The Postal Service contends that many of the key issues that Capital One will seek to explore at a deposition of Ms. Lowrance can be fully explored via further discovery of the Postal Service, and at later points in this Complaint proceeding. Additionally, the Postal Service takes issue with Capital One's characterization of Ms. Lowrance as a "key and essential witness in this proceeding."<sup>2</sup> Ms. Lowrance is not Acting Manager, Pricing Strategy, and has not held that position since November 28,

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<sup>1</sup> It should be noted that any documents in Ms. Lowrance's possession that relate to the issues in the instant Complaint would remain in the Postal Service's custody and control even after her separation date.

<sup>2</sup> In this regard, the Postal Service notes that Capital One's proposed procedural schedule, filed August 19, 2008, did not indicate a need for a hearing in order to examine "key and essential" witnesses. Presumably, the need for a hearing in this Docket is still uncertain.

2007. Moreover, she was out of the office from May 26, 2008 until August 11, 2008, and lacks personal knowledge of the most recent discussions and communications between the Postal Service and Capital One, prior to the filing of the instant Complaint.

Nevertheless, in an effort to find common ground in this time-sensitive matter, the Postal Service submits that if Capital One files a reasonable number of interrogatories directed to Ms. Lowrance on Monday, August 25, 2008, regarding her personal knowledge relating to the proposed Capital One NSA, including her phone conversations with Ms. Niki Howard of Capital One, then the Postal Service intends to provide sworn responses by Ms. Lowrance on August 29, 2008. The Postal Service reserves its rights to object to interrogatories as needed, but represents that it will, in good faith, respond to these interrogatories on Ms. Lowrance's last day as a postal employee. The Postal Service submits that, given the time-sensitive nature of Capital One's Application, this solution is preferable to holding a deposition with little time for the Postal Service and other parties to prepare, and at such an early stage in this proceeding, before issues have been focused via discovery.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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