

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

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**COMPLAINT OF CAPITAL ONE  
SERVICES, INC.**

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**DOCKET NO. C2008-3**

**OPPOSITION OF BANK OF AMERICA CORPORATION TO CAPITAL ONE SERVICE'S,  
INC.'S SECOND EMERGENCY MOTION TO CLARIFY RULING ESTABLISHING  
PROCEDURES FOR THE DEPOSITION OF JESSICA DAUER LOWRANCE**

The Bank of America Corp. submits this opposition to Capital One's Second Emergency Motion to Clarify Ruling Establishing Procedures for the Deposition of Jessica Dauer Lowrance. In its Emergency Motion, Capital One asks the Commission to rule that the Postal Service's objections should not prevent Ms. Lowrance from answering questions. Capital One makes the nonsensical argument that because it has an NDA with the Postal Service, Ms. Lowrance should be unimpeded from answering questions relating to Bank of America's NSA. The existence of an NDA between the Postal Service and Capital One is completely irrelevant to the issue.

Moreover, questioning Ms. Lowrance about issues subject to the NDA between Bank of America and the Postal Service falls outside the scope of Capital One's request for Ms. Lowrance's deposition. In its Application for Authorization to Depose Ms. Lowrance, Capital One states that Ms. Lowrance "is a key and essential witness in this proceeding because of her personal knowledge of the negotiations and decisions relating to the proposed Capital One NSA." (Application at 2 (emphasis added)). The subject matter of the deposition is not Bank of America's NSA. Information that relates to the Bank of America NSA has absolutely no relevance to Capital One's own statement of the subject matter of Ms. Lowrance's deposition.

Capital One's Emergency Motion raises fundamental issues of due process and the protection of Bank of America's legitimate business interests. The Commission simply cannot permit Capital One to redefine the issues and broaden the scope of its request on an emergency basis. If that means that (a) Ms. Lowrance is no longer available, and (b) if it is determined that the negotiations and other non-record matters relating to the Bank of America NSA are ultimately found to be relevant -- which Bank of America hotly contests -- Capital One will simply have to adduce that information from other sources. There are a large number of other sources within the Postal Service with knowledge of the Bank of America NSA. Bank of America urges the Commission to deny Capital One's Emergency Motion.

Respectfully submitted,

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