

PRESIDING OFFICER'S
RULING NO. MC2002-2/17

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

Experimental Rate and Service Changes
To Implement Negotiated Service Agreement
With Capital One Services, Inc.

Docket No. MC2002-2

PRESIDING OFFICER'S RULING
CERTIFYING QUESTIONS TO COMMISSION

(Issued January 17, 2003)

On January 8, intervenor and co-proponent Capital One Services, Inc. ("Capital One" or "COS") filed a pleading giving notice of its intention to object to admission of certain portions of the testimony filed by the Office of the Consumer Advocate in this docket on December 20, 2002. In the same pleading, Capital One requests issuance of a declaratory ruling stating that the rate proposals advanced in the OCA testimony to which it objects will not be considered by the Commission in this proceeding. Notice of Intention to Object to Admission of OCA Testimony and Request for Declaratory Ruling, January 8, 2003 ("Notice and Request").

Capital One's objection to introduction of the challenged OCA testimony, as well as its request for a declaratory ruling, are based on its claim that OCA's alternative rate and classification proposals improperly exceed the scope of the proceeding initiated by the Postal Service's Request. According to Capital One, this proceeding is limited to consideration of the classification proposal contained in the joint Request, which by its terms is limited to Capital One. On this basis, and according to its interpretation of applicable judicial authority, COS asserts that the Commission therefore lacks jurisdiction to recommend a rate change that would apply to all potential users. Notice and Request at 1-4. Additionally, COS asserts that recommendation of OCA's proposals would violate notice requirements because the Commission's Notice and

Order initiating this proceeding did not give mail users and other affected parties notice that the Commission might consider recommending a general mail classification change. *Id.* at 4. On these grounds, Capital One requests issuance of a ruling declaring that OCA's rate proposals will not be considered by the Commission in this proceeding. *Id.* at 4-5.

Other participants have offered various views either in support of or opposition to Capital One's request. The Postal Service supports it, arguing that this proceeding should not "be expanded beyond its natural contours[,]"¹ and representing that, "[m]ost importantly, the Postal Service could not implement the OCA's proposal."² OCA opposes it, arguing that it would be premature to rule on the propriety of its proposal at this stage of the proceeding,³ and that the Commission's original Notice is sufficient because interested parties who saw it could have anticipated that the Commission might recommend classification language that differed from that requested by the Postal Service.⁴ APWU agrees that recommending OCA's proposals would raise issues of notice and procedural due process, and suggests that that the Commission avoid procedural complications by declaring that witness Callow's testimony will be accepted for the limited purpose of evaluating the merits of the NSA.⁵

I find that Capital One's Notice and Request raises important due process and other legal issues that may affect the ultimate outcome of this proceeding. Therefore, pursuant to section 23(a)(8) of the rules of practice [39 C.F.R. § 3001.23(a)(8)], I am exercising my discretion to certify the questions raised by that document to the full Commission for its consideration and disposition.

¹ Comments of United States Postal Service on Capital One's Notice of Intention to Object to Admission of OCA Testimony and Request for Declaratory Ruling, January 15, 2003, at 2.

² *Ibid.*

³ Office of Consumer Advocate Answer to Request of Capital One Services, Inc. for a Declaratory Ruling, January 15, 2003.

⁴ Office of Consumer Advocate Comments on Need for Public Notice of OCA Proposals, January 13, 2003.

⁵ Response of American Postal Workers Union, AFL-CIO to Motion of Postcom et al. to Schedule Rebuttal Testimony, January 8, 2003.

RULING

The questions presented by the Notice of Intention to Object to Admission of OCA Testimony and Request for Declaratory Ruling, filed by Capital One Services, Inc. on January 8, 2003, and by the responses thereto, are hereby certified to the Commission for its consideration and disposition.

George Omas
Presiding Officer