

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 INTERROGATORIES OF CAPITAL ONE SERVICES, INC.
(COS/USPS-2(B), 7, 8, AND 10)
(August 18, 2008)**

In accordance with Rules 25 and 26 of the Commission's Rules of Practice and Procedure, the United States Postal Service hereby objects to the following interrogatories filed on August 8, 2008, by Capital One Services, Inc. (hereinafter "Capital One"): COS/USPS-2(B), 7, 8, and 10. The objectionable interrogatories are attached verbatim, and the reasons for objection are stated below.

Interrogatory COS/USPS-2(B)

The Postal Service objects to interrogatory COS/USPS-2(B) on the grounds of undue burden, relevance, privilege, and commercial sensitivity. This interrogatory asks the Postal Service to identify all formal and informal "internal reviews" of the Bank of America NSA, and explain how each finding in each internal review has informed the Postal Service's judgment of the proposed Capital One NSA and changed the valuation of the benefit of the Bank of America NSA.

The Postal Service objects to the above-referenced interrogatory on the grounds of undue burden because of the overly broad concept of "internal reviews." Many

internal analyses, meetings, and informal discussions could be considered “informal internal reviews,” and it would be unduly burdensome for the Postal Service to ascertain how many have taken place, and to identify any findings that may have been produced. Responding to this interrogatory would require the efforts of many postal employees, across multiple departments, in searching their files, meeting notes, and e-mails for any responsive information.

The Postal Service also objects to this interrogatory on the grounds of relevance. The Postal Service fails to see how every internal review of the Bank of America NSA would assist the Commission in ascertaining whether or not Capital One is similarly situated to Bank of America, or what would constitute a functionally equivalent agreement to the Bank of America NSA under current circumstances. This interrogatory covers such a wide range of potentially responsive material that providing descriptions of every internal review and every minute detail involved in the Bank of America NSA, would simply muddy the record and obfuscate the broader issues which need to be resolved in this Complaint. In short, this interrogatory seeks a level of detail that is beyond the issues in the instant docket, and is not reasonably calculated to the discovery of admissible evidence. Accordingly, the Postal Service objects to this interrogatory on the grounds of relevance.

Additionally, the Postal Service objects to COS/USPS-2(B) to the extent that it requests details regarding privileged communications related to the Bank of America NSA. There are surely a number of internal reviews that would fall within the broad scope of this interrogatory, which would be subject to the attorney-client privilege. In addition, there are other internal reviews produced prior to the approval of the Bank of

America NSA, which should be considered predecisional and subject to 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. Many of the communications sought by this interrogatory would be inextricably intertwined with the Postal Service’s decision-making process, particularly the NSA review and approval process. The disclosure of these internal reviews would, in effect, reveal the Postal Service’s deliberative process, and thus they should be protected under the deliberative process privilege.

Finally, the Postal Service objects to this interrogatory to the extent that it may reveal materials containing commercially sensitive and proprietary information. It is highly likely that, given the scope of this interrogatory, many reviews and findings related to the Bank of America NSA contain commercially sensitive and proprietary information. These materials may contain data and analyses performed by the Postal Service and/or Bank of America during the course of the Bank of America NSA proceedings. The disclosure of such information, even after the outcome of that docket, may create a chilling effect on future NSA negotiations and may otherwise cause competitive harm to the Postal Service and its NSA partner.

Interrogatory COS/USPS-7

The Postal Service objects to interrogatory COS/USPS-7 on the grounds of undue burden, relevance, privilege, and commercial sensitivity. This interrogatory

requests a description of all communications, internal or external to the Postal Service, that relate to Capital One's request for an NSA similar "in any way" to the Bank of America NSA. The Postal Service objects on the grounds of undue burden because it would take extensive work hours to determine all the conversations which may have taken place between any two individuals on this subject. This request implicates communications that may have taken place within several different departments at Postal Service Headquarters, and untold numbers of external communications.

For example, the Postal Service would have to identify and describe all communications between Capital One representatives and every National Account Manager (NAM) Capital One has had over the last few years on any issue that relates to this topic. Every communication each NAM had with his/her supervisor(s), and every communication those supervisors may have had with their supervisors at Postal Service Headquarters would also have to be logged and described in full. Clearly, the Postal Service would have to devote significant resources, both at Headquarters and in the Field offices, to comply with this interrogatory.

The Postal Service also objects to this interrogatory on the grounds of relevance. This interrogatory seeks a level of detail that is far beyond the issues in the instant docket and is not reasonably calculated to the discovery of admissible evidence. A description of all communications related to this matter does not assist the Commission in ascertaining whether or not Capital One is similarly situated to Bank of America, or what would constitute a functionally equivalent agreement to the Bank of America NSA under current circumstances.

Additionally, the Postal Service objects to COS/USPS-7 to the extent that it requests a list and description of privileged communications related to Capital One's request for a mail processing NSA similar in any way to the Bank of America NSA. There are likely a number of communications within the broad scope of this interrogatory that would be subject to the attorney-client privilege. In addition, there are likely many other communications that are predecisional and subject to 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. Many of the communications sought by this interrogatory would be inextricably intertwined with the Postal Service's decision-making process. The disclosure of these communications would, in effect, reveal the Postal Service's deliberative process, and thus they should be protected under the deliberative process privilege.

Finally, the Postal Service objects to this interrogatory to the extent that it may reveal communications containing commercially sensitive and proprietary information. It is highly possible, given the breadth of the communications covered by this interrogatory, that the disclosure of certain communications would reveal commercially sensitive and proprietary information. The disclosure of such information may negatively affect the Postal Service's ability to negotiate future NSAs, or may cause other forms of competitive harm.

Therefore, for the aforementioned reasons, the Postal Service objects to COS/USPS-7 on the grounds of undue burden, relevance, privilege, and commercial sensitivity.

Interrogatory COS/USPS-8

The Postal Service objects to interrogatory COS/USPS-8 on the grounds of undue burden, relevance, privilege, and commercial sensitivity. This interrogatory requests a description of all communications, internal or external to the Postal Service, that relate to the request of any other mailer for an NSA similar “in any respect” to the Bank of America NSA. The Postal Service objects on the grounds of undue burden because it would take dozens of work hours,¹ to determine all the conversations which may have taken place between any two individuals on this subject. This request implicates communications that may have taken place within several different departments at Postal Service Headquarters, and untold numbers of external communications, both inside and outside the Postal Service.

For example, the Postal Service would have to identify and describe all communications made by every NAM over the last few years whenever the Bank of America NSA came up with their respective company contacts.² Every communication each NAM had with his/her supervisor(s), and every communication those supervisors may have had with their supervisors at Postal Service Headquarters would also have to

¹ The effort in responding to this interrogatory is even greater than for COS/USPS-7, because this interrogatory applies to multiple mailers, and thus multiple NAMs.

² While it is probably unlikely that every NAM had such communications over the last few years, responding to this interrogatory at least requires *checking* with every NAM, as well as every other potential point of contact within the Postal Service.

be logged and described in full. Clearly, the Postal Service would have to devote significant resources, both at Headquarters and in the Field, to comply with this interrogatory.

The Postal Service also objects to this interrogatory on the grounds of relevance. This interrogatory seeks a level of detail that is far beyond the issues in the instant docket, and is not reasonably calculated to the discovery of admissible evidence. A description of all communications related to this matter does not assist the Commission in ascertaining whether or not Capital One is similarly situated to Bank of America, or what would constitute a functionally equivalent agreement to the Bank of America NSA under current circumstances.

Additionally, the Postal Service objects to COS/USPS-8 to the extent that it requests a list and description of privileged communications related to other mailers' requests for a mail processing NSA similar in any way to the Bank of America NSA. There are likely a number of communications within the broad scope of this interrogatory that would be subject to the attorney-client privilege. In addition, there are likely hundreds of other communications that are predecisional and subject to 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. Many of the communications sought by this interrogatory would be inextricably intertwined with the Postal Service's decision-making process. The disclosure of these communications would, in effect, reveal the Postal Service's

deliberative process, and thus should be protected under the deliberative process privilege.

Finally, the Postal Service objects to this interrogatory to the extent that it may reveal communications containing commercially sensitive and proprietary information. It is highly possible, given the breadth of the communications covered by this interrogatory, that the disclosure of certain communications would reveal commercially sensitive and proprietary information. The disclosure of such information may negatively affect the Postal Service's ability to negotiate future NSAs, or may cause other forms of competitive harm.

Therefore, for the aforementioned reasons, the Postal Service objects to COS/USPS-8 on the grounds of undue burden, relevance, privilege, and commercial sensitivity.

Interrogatory COS/USPS-10

The Postal Service objects to interrogatory COS/USPS-10 on the grounds of undue burden, relevance, and commercial sensitivity. This interrogatory requests a description of all contractual or legal relationships with any vendor or subcontractor of Bank of America that performs work related to the Bank of America NSA. The Postal Service objects on the grounds of undue burden because it would take extensive work hours to respond to this interrogatory. The Postal Service would have to coordinate with Bank of America to determine all vendors or subcontractors³ that work on anything *related to* the Bank of America NSA, and then determine which of those vendors or

subcontractors have contractual or legal relationships with the Postal Service. The effort involved with coordinating with Bank of America and with numerous postal employees, both at Headquarters and in the Field offices, to respond to this interrogatory would be significant.⁴ Accordingly, the Postal Service objects to this interrogatory on the grounds of undue burden.

The Postal Service also objects to this interrogatory on the grounds of relevance. This interrogatory seeks a level of detail that is far beyond the issues in the instant docket, and is not reasonably calculated to the discovery of admissible evidence. The Postal Service fails to see how a description of all contractual or legal relationships between vendors or subcontractors and the Postal Service would produce evidence that would assist the Commission in resolving the key issues in this Complaint: namely, whether or not Capital One is similarly situated to Bank of America, or what would constitute a functionally equivalent agreement to the Bank of America NSA under current circumstances. As such, the Postal Service objects to the above-referenced interrogatory on the grounds of relevance.

Finally, the Postal Service objects to COS/USPS-10 on the grounds of commercial sensitivity. Responding to this interrogatory would require the disclosure of a variety of legal and contractual relationships between the Postal Service and vendors or subcontractors, and a description of each relationship, which is not typically publicly disclosed. Moreover, as this interrogatory is directed at vendors or subcontractors *of*

³ Indeed, subcontractor is a fairly broad term, as it may include consultants or other individuals who perform work on behalf of Bank of America.

⁴ Again, even if few contractual or legal relationships actually exist out in the field, responding to this interrogatory would require the Postal Service to put in the time to

Bank of America, it would require disclosure of potentially commercially sensitive and proprietary information, which Bank of America, as the Postal Service's NSA partner, should not be required to reveal. The disclosure of such information could serve as a deterrent to other future NSA partners, and may also cause competitive harm to the Postal Service and its NSA partner, Bank of America. Therefore, the Postal Service objects to this interrogatory on the grounds of commercial sensitivity.

Thus, for the aforementioned reasons, the Postal Service objects to COS/USPS-2(B), 7, 8, and 10.

Respectfully submitted,

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check with multiple offices to determine whether such relationships exist, and if so, to describe those relationships in full.

INTERROGATORY COS/USPS-2

In its June 26, 2008, Answer in Opposition to Capital One's Motion for Bifurcation, the Postal Service refers to knowledge it has learned "on the road to implementation of the BAC NSA," and more specifically "asserts that knowledge it gained by undertaking regulatory and internal reviews of the BAC NSA can and should inform its judgment regarding any functionally equivalent NSA."

- A. Please confirm that the only regulatory review relating to the Bank of America NSA is PRC Docket No. MC2007-1. Please specify how each finding of that regulatory review:
- (1) has informed the Postal Service's judgment regarding the Proposed Capital One NSA and its valuation of the benefits from such an NSA; and
 - (2) has changed the Postal Service's valuation of the benefit of the Bank of America NSA from its expected value on February 7, 2007.
- B. Please identify all "internal reviews" of the Bank of America NSA, including reviews of individual Postal Service departments and the OIG, formal and informal, and specify how each finding in each internal review:
- (1) has informed the Postal Service's judgment regarding the Proposed Capital One NSA and its valuation of the benefits from such an NSA; and
 - (2) has changed the Postal Service's valuation of the benefit of the Bank of America NSA from its expected value on February 7, 2007.

INTERROGATORY COS/USPS-7

Please identify and describe all communications, internal or external to the Postal Service, that relate to Capital One's request for a mail processing NSA similar in any way to the Bank of America NSA.

INTERROGATORY COS/USPS-8

Please identify and describe all communications, internal or external, that relate to the request of any other mailer for a mail processing NSA similar in any respect to the Bank of America NSA. Please specifically identify and describe those communications that relate to the qualifications (or lack of qualifications) of that mailer for a Bank of America-type NSA. You do not have to identify the mailer by name, but please indicate the approximate amount of mail sent by the mailer and the industry that the mailer operates in.

INTERROGATORY COS/USPS-10

Does the Postal Service have any sort of contractual or legal relationship with any vendor or subcontractor of Bank of America that performs work related to the Bank of America NSA? If so, please describe.