

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

Postal Regulatory Commission  
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COMPLAINT OF CAPITAL ONE  
SERVICES, INC.

Docket No. C2008-3

**APPLICATION OF CAPITAL ONE SERVICES, INC.  
FOR AUTHORIZATION TO DEPOSE JESSICA DAUER LOWRANCE  
OF THE UNITED STATES POSTAL SERVICE**

(August 21, 2008)

Pursuant to Rule 33(b), Capital One Services, Inc. (Capital One) hereby requests that the Commission authorize the taking of testimony by deposition of Jessica D. Lowrance, an employee of the Postal Service and former Acting Manager of Pricing Strategy. On August 20, 2008, the website for the Association of Postal Commerce (Postcom) announced “ the appointment of Ms. Jessica Lowrance as its new vice president.”<sup>1</sup> Ms. Lowrance’s imminent departure from the Postal Service means that Ms. Lowrance will be “unavailable at the hearing” and an immediate deposition is necessary in order to “perpetuate the testimony of the witness.” Rule 33(a), 39 CFR 3001.33(a). Capital One’s application meets all three of the tests set out in Rule 33(a).

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<sup>1</sup> Accessed August 21 2008, <http://www.postcom.org>

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. Capital One's Complaint<sup>2</sup> contains the follow allegations:

On January 31, 2008 – about one month after the Board of Governors' approval of the Bank of America NSA—Niki Howard, Supplier Manager of Capital One, had an informal meeting with Jessica Lowrance, Acting Manager of Postal Service Pricing Strategy. Ms. Howard raised the possibility of a Bank of America-type NSA but Ms. Lowrance stated that Capital One would not be able to use the industry-average rates offered to Bank of America.

On April 2, 2008, Ms. Howard spoke to Ms. Lowrance by telephone and again raised the Bank of America NSA, asking Ms. Lowrance if she was sure that Capital One could not do something similar.

Ms. Lowrance replied that her department “was not supporting any NSAs like the Bank of America filing” and that they were only interested in doing volume-based deals. *Id.* at ¶¶ 30- 32.

The Postal Service has disputed key portions of these allegations, including “characterization of the conversations.” Answer of the United States Postal Service (July 21, 2008) at ¶¶ 30-32. Because no other Postal Service employee participated in these and other conversations with Capital One, Ms. Lowrance's testimony is indispensable. Furthermore, during much of 2007, Ms. Lowrance was Acting Manager of Pricing Strategy and would have played a role in decisions relating to NSAs that were functionally equivalent to the Bank of America NSA. Counsel for the Postal Service has indicated in conversation that Ms. Lowrance has maintained files on the Capital

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<sup>2</sup> Complaint of Capital One Services Inc. Regarding Discrimination and Other Violations of Law by the United States Postal Service (June 19 2008)(Complaint)

One NSA negotiations, and her testimony is necessary to authenticate those documents.

This Application also requests that Ms. Lowrance bring with her to the deposition all documents from her offices relating to the issues in the Capital One Complaint, including, but not limited to, any documents she prepared, reviewed, or has on file that are responsive to Capital One's Document Requests COS/USPS-1-17, filed August 8, 2008.

Rule 33(a) provides that depositions may be taken if:

- (1) the person whose deposition is to be taken would be unavailable at the hearing, or
- (2) the deposition is deemed necessary to perpetuate the testimony of the witness, or
- (3) the taking of the deposition is necessary to prevent undue and excessive expense to a participant and will not result in undue delay or an undue burden to other participants.

In the very near future, Ms. Lowrance will no longer be a Postal Service employee and will have different responsibilities in her new position. Taking her deposition before her departure would minimize disruption to her new job and avoid her having to take leave to participate in a future hearing or deposition. There is also a strong likelihood that her new job responsibilities will make her completely unavailable for a hearing under Rule 33(a)(1). Her immediate deposition is thus necessary to perpetuate her testimony under Rule 33(a)(3). Moreover, scheduling a deposition while Ms. Lowrance is still an employee of the Postal Service would minimize costs to the Postal Service, which presumably would have to reimburse her for the time away from her new job, a consideration under Rule 33(a)(3). Because discovery has just begun, the deposition would not cause "undue delay or an undue burden."

The following information is provided in compliance with Rule 33(b):

Name:

Jessica Lowrance  
Former Acting Manager, Pricing Strategy  
United States Postal Service  
475 L'Enfant Plaza, SW  
Washington, DC 20260-4100

Time and Place:

10:00 AM on September 8, 2008  
Presiding Officer for C2008-3  
Hearing Room or other location  
Postal Regulatory Commission  
901 New York Avenue, NW  
Washington DC 20268-0000

Request:

To appear for a deposition in Docket No. C2008-3, and to bring all documents from Ms. Lowrance's offices relating to the issues in the Capital One Complaint, including, but not limited to, any documents she 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.

Subject Matter of Testimony:

Negotiations and decisions relating to a Capital One NSA that is similar to the Bank of America NSA and requests for NSAs similar to the Bank of America NSA; relevant conversations with Capital One representatives; knowledge relating to key issues, as specifically defined by the Postal Service: "whether or not Capital One is 'similarly situated' to Bank of America, or what constitutes a functionally equivalent agreement to the Bank of America NSA under current circumstances."

For the foregoing reasons, Capital One respectfully requests that the Commission grant this Application for Authorization to Depose Ms. Lowrance.

Respectfully submitted,

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