

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

COMPLAINT OF CAPITAL ONE
SERVICES, INC.

Docket No. C2008-3

**THIRD EMERGENCY MOTION TO CLARIFY RULING ESTABLISHING
PROCEDURES FOR THE DEPOSITION OF JESSICA DAUER LOWRANCE**

During the deposition of Ms. Lowrance today, counsel for the United States Postal Service has taken the position that all matters that the Postal Service believes are subject to the deliberative process privilege should be deferred until the closed portion of the hearing, and, further, ***that even in the context of the closed session, counsel will instruct the witness not to answer any issues outside of Ms.***

Lowrance's conversations with Ms. Niki Howard of Capital One, apparently based on the notion that any issue outside of that is either irrelevant or outside the scope of the subject matter listed in Capital One's original Application.

The following draft language, prepared by Postal Service counsel Tony Alverno, lays out this position (emphasis added):

However, in the interest of accommodating the parties, the Postal Service does not intend to assert individual objections to certain questions posed to Ms. Lowrance today during oral cross-examination and will allow the deponent to answer those questions, to the extent those oral questions are aimed at eliciting information on conversations Ms. Lowrance may have had with her management concerning conversations Ms. Lowrance is alleged to have had with Ms. Niki Howard of Capital One, on the following conditions:

The USPS reserves the right to direct the witness not to testify in the event an answer would reveal information protected by the [deliberative process privilege] to the extent it does not pertain to discussions the deponent may have had about matters other than those arising from conversations between Ms. Lowrance and Ms. Howard, and will decide to exercise its rights to object or allow the deponent to answer on a case-by-case basis.

We believe this position contravenes the letter and spirit of Ruling C2008-3/3, which sets up a closed proceeding to address any concerns about the disclosure of commercially sensitive or privileged information. More importantly, counsel for the Postal Service is drawing an arbitrary “relevance” line in an effort to prevent—effectively for all time—open and honest inquiry into relevant matters within Ms. Lowrance’s personal knowledge. No one pretends that her knowledge of the facts giving rise to this complaint is limited to a few conversations with Ms. Howard of Capital One—as her testimony today has made abundantly clear.

Accordingly, Capital One must request a ruling from the Commission that counsel cannot instruct the witness not to answer based on an objection that contests relevancy or that asserts that the question falls outside the scope of the Application. Capital One has no interest in “irrelevant” questions, and, in the context of resolving this Complaint, the Commission can readily decide for itself whether testimony given during this deposition is relevant. Counsel for the Postal Service should not be able to make that determination unilaterally, particularly in a time sensitive proceeding like this one.¹

¹ In that regard, and with reference to Capital One’s previous Motion for Additional Time to Depose Jessica Dauer Lowrance, please note that additional breaks and wrangling between counsel have left Capital One and other parties with even less time to depose Ms. Lowrance.

Respectfully submitted,

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