

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

COMPLAINT OF CAPITAL ONE  
SERVICES, INC.

Docket No. C2008-3

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

Although Capital One has made a good faith effort to avoid additional emergency motions practice, we are compelled to file yet another motion. This is a joint motion of three parties, Capital One Services, Inc., APWU, and the Public Representative.

The Commission has issued repeated rulings—particularly Ruling Nos. C2008-3/3 and C2008-3/7—that require the Postal Service to produce responsive documents so that Capital One can proceed with the deposition, and, according to the Commission's original orders, should have produced all those documents at the start of the deposition yesterday.

As of approximately 3:30 p.m. today, however, Capital One has yet to receive a single responsive document—no emails, no memoranda, no notes, nothing—beyond the 21 pages and general NSA procedure manual on the internet produced yesterday. As a result, the day has been spent wrangling over document issues and, as of 3:37 PM Ms. Lowrance has given only approximately four (4) minutes of testimony today.

We are trying to conclude this deposition, but Capital One cannot conduct an effective deposition without documents, and Ms. Lowrance has described numerous documents relevant and responsive to Capital Ones claims—in particularly a memorandum and a presentation regarding the Bank of America NSA that the witness

has admitted discuss the potential of functionally equivalent NSAs to the Bank of America NSA.

These documents go to the heart of Capital One's claims of discrimination and other violations of law, and counsel for all parties have committed that the use of the documents in the context of the deposition will not waive any claims of privilege. Capital One is not asking for these documents to be introduced into the record—a decision that the Commission can make later—only that we be allowed to use the documents in a closed proceeding under protective conditions agreed to by the parties for purposes of conducting an effective deposition.<sup>1</sup>

Respectfully submitted,

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<sup>1</sup> Ruling No. C2008-3/3 at p. 4 requires that the "Postal Service must also appropriately redact materials that contain both privileged and non-privileged information or exempt and non-exempt information." (emphasis added) If the Postal Service had complied with this Ruling, the parties may have been able to reach agreement on document production and testimony with little or no resort to a sealed record. At this point, however, the Postal Service has produced no redacted document at this deposition, and there is no time to follow that alternative procedure. The other parties must insist on production of the full documents for use in this deposition but under seal, subject to a claim of privilege to be decided by the Presiding Officer after briefing by the parties.

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