

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

COMPLAINT OF CAPITAL ONE SERVICES, INC.

Docket No. C2008-3

**MOTION OF THE UNITED STATES POSTAL SERVICE
TO STRIKE PORTIONS OF LOWRANCE DEPOSITION TRANSCRIPT
VOLUME 2, PURSUANT TO P.O. RULING NO. C2008-3/7
(September 12, 2008)**

The United States Postal Service hereby moves to strike certain portions of Volume 2 of the transcript of the deposition of Jessica Dauer Lowrance, pursuant to P.O. Ruling No. C2008-3/7. In that ruling, issued August 28, 2008, the Presiding Officer stated that counsel would have seven days from the day each transcript volume was complete to identify by page and line the questions considered objectionable and to present arguments for why answers to those questions should be stricken.¹

On August 28, 2008, the Presiding Officer issued P.O. Ruling No. C2008-3/8, identifying certain issues as falling outside the scope of the application to depose Jessica Dauer Lowrance. Volume 2 covered the second day of Ms. Lowrance's deposition, August 28 and a portion of August 29, 2008, in which a number of questions to the deponent addressed issues outside the scope of the

¹ Presiding Officer Ruling (No. C2008-3/7) on Procedural Requests Related to the Deposition of Jessica Dauer Lowrance (Aug. 28, 2008), at 3-4.

application, as clarified in the Presiding Officer's Ruling. The Postal Service hereby moves to strike such portions of the transcript.

P.O. Ruling No. C2008-3/8 indicated that the following issues should not be pursued at this deposition:

1. The existence of a NDA between the Postal Service and Capital One;
2. The negotiations or the negotiation process between Bank of America and the Postal Service prior to the signing of the Bank of America agreement;
3. Other existing or potential agreements between Bank of America and the Postal Service; and
4. Procedures utilized by Bank of America that the Postal Service accepts as fulfilling the obligations of their negotiated service agreement.²

In addition, the Presiding Officer has ruled that the issue of an Office of the Inspector General ("OIG") memorandum on read/accept rates related to the Bank of America NSA "is at best tangential" to Ms. Lowrance's deposition.³ The Presiding Officer directed the parties to brief this issue. In its response to the ruling, the Postal Service maintained that the OIG memorandum is irrelevant, privileged, and exempt from disclosure under applicable statutory and common-law standards.⁴

The Postal Service identifies the following portions of Volume 2 of the transcript as related to issues that should not be pursued at the deposition and moves to strike such portions:

² P.O. Ruling No. C2008-3/8 (Aug. 28, 2008), at 3.

³ P.O. Ruling No. C2008-3/7 (Aug. 28, 2008), at 2.

⁴ Response of the United States Postal Service to P.O. Ruling No. C2008-3/7, Ruling on Procedural Requests Related to the Deposition of Jessica Dauer Lowrance, PRC Docket No. C2008-3 (Sept. 4, 2008), at 2-6.

Transcript Citation	Justification for Motion to Strike
Page 262, line 14, to Page 264, line 1	Subject matter relates to memorandum of the General Counsel protected from disclosure by attorney work-product privilege.
Page 264, line 25, to Page 267, line 1 through "I see."	Related to negotiations between the Postal Service and Bank of America on the NSA.
Page 271, line 22, to Page 272, line 1	Same.
Page 272, line 20, to Page 273, line 11	Same.
Page 275, line 6, to Page 276, line 18	Subject matter is related to issues associated with the Bank of America NSA, and is irrelevant and outside the scope of the deposition under Rule 33.
Page 277, lines 10 to 22	Related to negotiations between the Postal Service and Bank of America on the NSA.
Page 286, line 8 beginning "As the" to Page 287, line 4	Subject matter is related to issues associated with the Bank of America NSA, and is irrelevant and outside the scope of the deposition under Rule 33.
Page 287, line 21, to Page 288, line 11	Related to negotiations between the Postal Service and Bank of America on the NSA.
Page 304, line 7, to Page 305, line 10	Same.
Page 324, line 12, to Page 327, line 9.	Subject matter is not relevant and are outside the scope of the deposition under Rule 33 unless it pertains to functional equivalence.
Page 329, line 14, to Page 338, line 15	Related to implementation of the Bank of America NSA.
Page 376, line 17 to Page 378, line 11.	Subject matter is related to details of the Bank of America NSA and is irrelevant and outside the scope of the deposition under Rule 33.
Page 393, line 11, to Page 394, line 1	The various scenarios evaluating the Bank of America NSA are irrelevant to this proceeding.
Page 394, line 5, to Page 398, line 2	Related to negotiations between the Postal Service and Bank of America on the NSA.
Page 403, line 24, to Page 412, line 12	Related to issues concerning the Bank of America NSA and irrelevant to this deposition.
Page 416, line 13 to line 17	Matter relates to OIG memorandum, which the Presiding Officer has ruled to be not properly addressed to the witness during this deposition.

The Postal Service's motion to strike relates to a number of instances in the transcript, because substantial material of contested admissibility was considered in the closed proceeding included in this transcript. The Postal Service submits that this is reasonable and consistent with past rulings, and it respectfully requests that the Presiding Officer direct that these excerpts be stricken.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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