

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

COMPLAINT OF CAPITAL ONE SERVICES, INC.

Docket No. C2008-3

**CONSENT MOTION OF THE UNITED STATES POSTAL SERVICE FOR
EXTENSION OF TIME TO FURTHER SUPPLEMENT PRIVILEGE LOGS**
(September 18, 2008)

The United States Postal Service hereby moves for an extension of time to further supplement its privilege log associated with the deposition of Jessica Dauer Lowrance. Presiding Officer's Ruling No. C2008-3/17, issued September 16, 2008, ordered the Postal Service to file supplemental privilege logs associated with materials from either day of the deposition of Ms. Lowrance by September 18, 2008. The Postal Service is today filing supplemented versions of its privilege logs associated with the first¹ and second² days of the Lowrance deposition, in accordance with P.O. Ruling No. C2008-3/17, that includes page and line citations for each entry. However, the Postal Service respectfully requests an extension of time to further supplement its privilege log pertaining to the e-mails on Ms. Lowrance's computer.

It is the Postal Service's understanding, based on all recent Presiding Officer's Rulings pertaining to the Lowrance deposition, that it should provide a privilege log for all privileged e-mails on Ms. Lowrance's computer that pertain to the Bank of America

¹ Notice of the United States Postal Service of Filing Privilege Log Associated with the First Day of the Deposition of Jessica Dauer Lowrance, September 5, 2008.

² Notice of the United States Postal Service of Filing Privilege Log Associated with the Second Day of the Deposition of Jessica Dauer Lowrance, September 9, 2008.

NSA or any prospective NSA with Capital One, and any e-mails related to any of Capital One's Document Requests COS/USPS-DR-1-17, which were incorporated into the Lowrance deposition. However, it should be noted that Presiding Officer's Ruling No. C2008-3/8 states that questions related to the implementation of the Bank of America NSA, and the negotiations prior to the signing of the Bank of America NSA, are beyond the scope of the Lowrance deposition.

To be clear, the scope of this inquiry involves hundreds and, if embedded emails are counted separately, likely thousands of e-mails. Within that universe, the Postal Service believes that most of these e-mails are privileged or exempt from disclosure on a variety of grounds. The task of producing a complete privilege log involves reviewing every e-mail in Ms. Lowrance's relevant Outlook folders to determine which privileges or exemptions might apply to each individual e-mail, and then creating a detailed listing for each privileged or exempt e-mail, including embedded emails. In its efforts to complete this task, the Postal Service has thus far assigned six Administrative Assistants, none of whom is normally focused on this docket, to review the relevant Outlook folders and create a spreadsheet of all e-mails. Several postal attorneys, including those not normally focused on this docket, are also involved in reviewing the e-mails to determine which privileges or exemptions might apply.

Accordingly, the Postal Service today moves for an extension of time to further supplement its privilege logs. The Postal Service submits that an extension of time would best serve the parties in this case, and not unduly strain the resources of the

parties or the Commission in further motions practice regarding these privilege logs.³ The Postal Service would also like to emphasize that the scope of the privilege log for Ms. Lowrance's e-mails is inextricably tied to the underlying document requests COS/USPS-DR-1-17 that were incorporated into the Lowrance deposition. Those document requests have been objected to, in full, and Capital One has received an indefinite extension of time to file a motion to compel, as Capital One and the Postal Service are actively engaged in informal discussions to narrow the scope of discovery in this docket.

The Postal Service submits that granting an extension of time with regard to these privilege logs, while the Postal Service and Capital One continue discussions, would be an efficient use of resources and would not burden this docket with ultimately unnecessary motions practice in the interim. Since the Lowrance deposition has long since concluded, the remaining purpose of the privilege logs seems closely related to the resolution of this discovery dispute. The Postal Service and Capital One have been discussing precise terms by which the Postal Service can search discoverable documents, including electronic documents, which will inform the instant dispute regarding Ms. Lowrance's e-mails. These discussions will continue next week, and will specifically focus on the subject of Ms. Lowrance's e-mails. Accordingly, the Postal Service submits that it will file a status update regarding its discussions with Capital One on Friday, September 26, 2008.

³ For example, if the Postal Service were to file periodic supplements each week, or need to file further motions for extension of time, it would significantly add to the pleadings in the instant docket.

Counsel for the Postal Service has discussed the matter with opposing counsel, and has obtained the consent of counsel for Capital One regarding the instant motion for extension of time.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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