

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

COMPLAINT OF CAPITAL ONE SERVICES, INC.

Docket No. C2008-3

**RESPONSE OF THE UNITED STATES POSTAL SERVICE
TO MOTION TO COMPEL RESPONSE TO INTERROGATORY OF
CAPITAL ONE SERVICES, INC.
(COS/USPS-12)
(September 23, 2008)**

The United States Postal Service hereby responds in opposition to the Motion to Compel of Capital One Services, Inc. ("Capital One") regarding Interrogatory COS/USPS-12. Capital One filed COS/USPS-12 on August 22, 2008, along with document request COS/USPS-DR-18. The Postal Service filed its objections to this interrogatory and the accompanying document request on September 2, 2008. Capital One filed its motions to compel on September 16, 2008. The instant pleading responds to the substance of both motions to compel, regarding COS/USPS-12 and COS/USPS-DR-18. The interrogatory in question reads as follows:

INTERROGATORY COS/USPS-12

Please provide the following information with respect to Docket No. C2008-3:

- (1) a clear and concise statement of any disputed factual allegations upon which the Postal Service relies;
- (2) a clear and concise statement of any legal interpretation upon which the Postal Service relies;
- (3) explanatory detail for each material factual allegation in the Complaint that the Postal Service denied in its Answer, filed July 21, 2008, and, for any denial based on information and belief, an explanation as to why such

- facts could not reasonably be ascertained by the Postal Service prior to filing the Answer;
- (4) every defense relied upon, including the nature of any defense and factual allegations and law upon which the Postal Service relies. Please provide and separate identify all affirmative defenses.
 - (5) a statement of the nature of the evidentiary support that the Postal Service has or expects to obtain to support its factual allegations and defenses.

As a preliminary matter, the Postal Service herein incorporates by reference the arguments contained in its objections to COS/USPS-12 and COS/USPS-DR-18. In summary, this interrogatory and accompanying document request ask the Postal Service to provide a detailed summary or preview of every piece of testimony it may possibly file, and every legal argument it might make in brief or at any other stage of this proceeding, despite the fact that no procedural schedule has yet been established.

The Postal Service not only objects on the grounds of relevance and undue burden, but also further suggests that this interrogatory and document request should not require a response because they subvert well-established procedures typically utilized in complaint proceedings, and seek to shift the burden of proof in this docket onto the Postal Service. These discovery requests clearly reflect Capital One's intent¹ to anticipate any argument the Postal Service might make in this case and to shift the burden of proof onto the Postal Service. The burden in any complaint case lies with the complainant, not with the Postal Service. Capital One should not be permitted to bypass the testimony, hearing, and briefing stage via COS/USPS-12 and COS/USPS-DR-18.

¹ This intent is also reflected in Capital One's proposed procedural schedule. See Response of the United States Postal Service to Motion of Capital One Services, Inc. to Propose Procedural Schedule, Docket No. C2008-3, August 26, 2008.

In its motion to compel, Capital One continues along this same course, by attempting to utilize the recently-instituted complaint rulemaking docket (Docket No. RM2008-3, August 21, 2008) in support of its discovery requests. Capital One argues that the Commission's proposed rules should be employed in this case to allegedly achieve efficiency,² and goes so far as to blame the Postal Service for "clinging" to the existing rules of practice and procedure. Capital One has attempted to revise the existing rules in the midst of this proceeding once before,³ and was rejected.⁴ The Postal Service respectfully urges the Commission to reach a similar result here.

As the Presiding Officer recently stated, regarding Capital One's prior attempt to impose new rules of practice and procedure in this case,

at this stage of the proceeding, it seems wisest to continue to utilize the procedural rules that have enabled the Commission to successfully evaluate past complaints promptly, while affording all parties appropriate due process.

P.O. Ruling No. C2008-3/15 at 5. Circumstances in the instant docket have not changed since the issuance of that ruling to justify a departure here.⁵ Indeed, the decision to follow the existing rules was established at the outset of this case, and has

² Capital One provides no support for its position that some new expedition or efficiency will come to this docket as a result of Capital One's proposed changes. Indeed, its continued attempts to subvert well-established complaint procedures only serve to result in additional pleadings, and further expand this docket.

³ See Motion of Capital One Services, Inc. to Strike a Portion of the Postal Service's Answer and for Clarification of Procedures, Docket No. C2008-3 (August 19, 2008).

⁴ See P.O. Ruling No. C2008-3/15, Docket No. C2008-3 (September 9, 2008) (denying motion by Capital One to add additional procedures to the instant docket).

⁵ In fact, the Postal Service submits that given the ongoing cooperation between Capital One and the Postal Service to narrow the scope of discovery informally, there is even *less* reason to depart from existing Commission rules at this time.

been consistently stated throughout.⁶ Thus, Capital One's argument in its motion to compel that its discovery requests are supported by the pending complaint rulemaking or Capital One's vague PAEA rationale should be rejected. Similarly, Capital One offers no justification for its assertion that the instant discovery requests would make discovery "much more focused." This argument was put forth by Capital One earlier in this docket, and was also soundly rejected.⁷

Therefore, for the foregoing reasons, and the arguments contained in its objections to COS/USPS-12 and COS/USPS-DR-18 incorporated herein, the Postal Service respectfully urges the Commission to deny Capital One's motions to compel.

⁶ See Tr. 1/14, Docket No. C2008-3 ("it's my expectation that we will adhere to current rules for this case."); see also P.O. Ruling No. C2008-3/24, September 23, 2008 ("the expectation is for this case to adhere to current Commission rules").

⁷ See P.O. Ruling No. C2008-3/15 at 5 ("the sweeping nature of suggestions 1 and 2 would expand discovery beyond past Commission practice. While this might result in reduced hearing time, such a result can not be predicted with confidence.")

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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