

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

COMPLAINT OF CAPITAL ONE
SERVICES, INC.

Docket No. C2008-3

**RESPONSE OF CAPITAL ONE SERVICES, INC.
TO MOTION OF THE UNITED STATES POSTAL SERVICE
FOR FURTHER EXTENSION OF DEADLINES PURSUANT TO ORDER NO. 208**

(May 6, 2009)

Capital One Services, Inc. ("Capital One") responds to the Motion of the Postal Service for Further Extension of Deadlines Pursuant to Order No. 208,¹ filed on May 6, 2009 ("May 6 Motion"). On May 5, the Postal Service requested an extension of deadlines set forth in that Order.² Today, the Presiding Officer granted the Postal Service's request and extended the May 5 deadline by one day.³ The May 6 Motion requests yet another extension.

Order No. 208 set May 5, 2009, as the deadline for the Postal Service to file privilege logs and certain other information in response to document requests submitted as far back as August 8, 2008. The stated grounds for the May 5 Motion for Extension of Deadlines is that "counsel with the requisite knowledge of the relevant documents and privilege logs is on unscheduled leave today." In the May 5 Motion, the Postal Service does not indicate a set date for the "aforementioned counsel's return to the

¹ PRC Order No. 208, Order on Capital One Motion to Compel and Extension of Deadlines Certified to the Commission by Presiding Officer's Ruling No. C2008-3/38, Docket No. C2008-3, April 29, 2009.

² Motion of the United States Postal Service for Extension of Deadlines Pursuant to Order No. 208, Docket No. C2008-3, May 5, 2009 ("May 5 Motion").

³ P.O. Ruling No. C2008-3/41, Presiding Officer's Ruling Granting Extension, Docket No. C2008-3, May 6, 2009, at 1.

office, " but requests that the schedule set forth in Order No. 208 be extended "accordingly." *Id.* at 1. In the May 6 Motion, the Postal Service proposes to submit an update tomorrow as to counsel's status and, *if* counsel has returned from leave, the Postal Service's *estimate as to when it can prepare an appropriate filing.*" May 6 Motion at 2 (emphasis added). This statement seems to imply that the Postal Service does not intend to file responses to document requests immediately upon counsel's return.

While it is common professional courtesy for parties not to oppose requests for extensions of time, Capital One seeks clarification of three issues: First, as quoted above, the request for "Further Extension of Deadlines" does not make clear whether the Postal Service is requesting an extension for one more day or for an open-ended amount of time. Given that the Postal Service has had nine months to prepare privilege logs and to produce documents, that Capital One has expended numerous hours helping to log and organize previewed documents for the Service, and that several Postal Service lawyers and legal assistants are familiar with discovery in this case, Capital One would oppose an extension beyond Friday, May 8, 2009.

Second, the 900-page privilege log for Group 3 documents has been complete since early April 2009, when the 5-inch stack was shown briefly to Capital One's counsel. Order No. 208 required filing of this log on May 5, 2009. See Order No. 208 at 5. It will take the parties considerable time to review this document. There is no reason that this document cannot be filed immediately, and Capital One respectfully requests that the Commission not grant an extension beyond Friday, May 8, 2009 for filing of the log.

Third, Group 1 documents have already been identified as non-privileged. See Order No. 208 at 4. In an effort to expedite discovery for the Postal Service, Capital One previewed, stamped, and prepared a log for these documents -- while a Postal Service legal assistant looked on and Postal Service counsel supervised. The log of non-privileged Group 1 documents was filed under seal on April 20, 2009. Group 1 documents were last seen in neat, sorted stacks at Postal Service Headquarters in early April. Again, there is no reason that the Postal Service cannot produce these documents immediately. Capital One thus requests that the Commission not grant an extension beyond Friday, May 8, 2009, for filing of Group 1 documents.

At a certain point, the Postal Service must take document discovery seriously. At least 7 names of Postal Service attorneys have appeared on pleadings in this case, and it is not unreasonable to expect that one of them could file documents that have been ready for production one month ago in order to comply with an Order of the full Commission. Capital One is concerned that, after the Postal Service has had 9 months to drag its feet with document production, it will file tens of thousands of pages at once to be reviewed within the time limits set by Order No. 208, and possibly accompanied by substantive motions which require responses. The Commission's schedule in Order No. 208 attempts to avoid this situation, and Capital One respectfully requests that the Commission stand by that schedule to the greatest extent possible.

Respectfully submitted,

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