

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

COMPLAINT OF CAPITAL ONE SERVICES, INC.

Docket No. C2008-3

**STATUS REPORT OF THE UNITED STATES POSTAL SERVICE
ON DISCOVERY ISSUES RAISED IN PREHEARING CONFERENCE**
(March 6, 2009)

The United States Postal Service hereby submits its status report regarding the discovery issues raised by the Presiding Officer at the prehearing conference held on March 3, 2009. The instant pleading addresses the two main areas focused on at the prehearing conference: the progress of the Postal Service's electronic document search, and the status of outstanding interrogatory responses.

Document Search

The Postal Service continues to review the e-mails and other documents produced via an electronic search. As background, the Postal Service and Capital One cooperated extensively on narrowing the scope of the document search. The parties agreed upon a number of Boolean search terms, as well as a list of individuals' e-mails that Capital One wished to focus upon. The Postal Service's IT Department successfully ran this initial search, and despite the narrowing of the individuals and the

search terms, thousands of e-mails were produced in this search. Many of these e-mails include separate attachments of varying lengths. In addition, each root message may be produced multiple times, if that root message is a part of an e-mail “trail” in multiple forwards and replies.

Thus, despite the parties’ best efforts to focus the document search initially, the Postal Service’s search for documents remains ongoing. The search process involves reviewing each e-mail produced via the Boolean search terms to determine what, if any, privileges may apply. The documents are then sorted into privileged and non-privileged binders, and receive additional attorney review. Privilege logs are compiled for all privileged e-mails and attachments. When necessary, appropriate redactions are made. Since this process began, the Postal Service has devoted a number of paralegals and administrative assistants to this task, which has required countless work hours. While the document search is not yet complete, substantial progress has been made over the last few months.

The Postal Service and Capital One have scheduled a meeting for early next week to discuss the status of the Postal Service’s document search and to determine next steps. The Postal Service believes these informal communications have assisted the parties in focusing discovery in this case. While the search has been time-consuming, the cooperation between the parties thus far has avoided extensive and contentious motions practice before the Commission.

Outstanding Interrogatory Responses

The Postal Service has identified the following outstanding interrogatory responses:

- PR/USPS-12 (filed 8/28/08)
- PR/USPS-15 (filed 9/3/08)
- PR/USPS-17 (filed 9/9/08)
- VP/USPS-1 (filed 9/16/08)
- VP/USPS-5-11 (filed 10/10/08 – partial objection filed)

The Postal Service is working on preparing responses, and plans on filing responses to all of these interrogatories by the end of next week (March 13), if not sooner. Each individual response will be filed as it is completed, along with appropriate motions for late acceptance.

It should also be noted that there are a number of interrogatories and document requests filed by Capital One, which have been subject to a joint stipulation to extend the time to respond, pending the outcome of the parties' discovery discussions. Those discovery requests are still in dispute. Capital One also has responses to Postal Service objections and motions that have been subject to this joint stipulation. The Postal Service expects that these matters will be resolved by the close of the discovery period in this docket, as the Postal Service and Capital One continue to work to resolve these disputes informally.

The Postal Service appreciates the Commission's patience and the patience of other parties in this case, as the Postal Service and Capital One have been resolving various discovery disputes. The Postal Service also understands the Commission's desire to establish an appropriate procedural schedule in this docket and to resolve this case in an expeditious manner. The Postal Service is prepared to move forward, and to that end, is committed to filing all outstanding interrogatory responses by the end of next week, while at the same time, continuing to work informally with Capital One to narrow the scope of discovery in this case and the issues to be litigated.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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