

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

Complaint of Capital One Services, Inc.)

Docket No. C2008-3

PUBLIC REPRESENTATIVE MOTION TO COMPEL RESPONSES
TO INTERROGATORIES TO UNITED STATES POSTAL SERVICE
(PR/USPS-2, -4)
August 26, 2008

On August 11, 2008, the Public Representative submitted discovery requests to the Postal Service.¹ On August 21, 2008, the Postal Service objected to interrogatories PR/USPS-2 and -4.² Pursuant to Rules 26(c) and 27(c) of the Rules of Practice of the Postal Regulatory Commission, the Public Representative hereby moves to compel responses to those interrogatories and requests for production of documents. The text of the interrogatories and requests for production of documents is set out here.

PR/USPS-2. Please provide the average read and accept rate for Bank of America's First-Class Mail and Standard Mail since implementation of the Bank of America NSA.

PR/USPS-4. For Fiscal Years 2006, 2007 and 2008, please provide the average read and accept rate for Capital One's First-Class Mail and Standard Mail

The Postal Service objects on grounds of commercial sensitivity and predecisional privilege.

In the interest of expedition, the Public Representative does not dispute the commercial sensitivity of the information sought. The Postal Service has asserted that

¹ Public Representative Interrogatories to United States Postal Service (PR/USPS-1-7) August 11, 2008.

² Objection of the United States Postal Service to Interrogatories of Public Representative (PR/USPS-2 and 4), August 21, 2008.

the information sought is protected by nondisclosure agreements (NDAs). However, counsel for the Postal Service has informed the Public Representative that both NDAs contain "escape clauses" that permit disclosure of information if ordered by the Commission. Accordingly, the Public Representative requests an immediate order directing the Postal Service to file responses under seal subject to protective conditions like those sought by Capital One.³

The claim of predecisional privilege is difficult to address. Bank of America's read and accept rates are critical for evaluating whether an identical NSA for Capital One would lose money, as the Postal Service seems to claim.⁴ The fact that the same or similar data are required by a data collection plan and will be provided in the future argues *for* release. A data collection plan is not a shield that somehow immunizes data from discovery. Nor has the Postal Service identified a decision that requires keeping objective measurements—as opposed to candid discussion—secret. This claim of privilege has no basis in law or fact.

Respectfully submitted,

EMMETT RAND COSTICH
Public Representative

901 New York Avenue, N.W.
Washington, D.C. 20268-0001
(202) 789-6833; Fax (202) 789-6891
email: rand.costich@prc.gov

³ Motion of Capital One Services, Inc. for Protective Order Regarding Response to Interrogatory of the Public Representative (PR/COS-2), August 22, 2008.

⁴ See Postal Service response to interrogatory PR/USPS-7(a), August 25, 2008.