

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

Postal Regulatory Commission
Submitted 9/24/2008 3:19:53 PM
Filing ID: 61064
Accepted 9/24/2008

COMPLAINT OF CAPITAL ONE
SERVICES, INC.

Docket No. C2008-3

ANSWER OF CAPITAL ONE SERVICES, INC.
IN OPPOSITION TO THE MOTION OF BANK OF AMERICA
TO STAY PROCEEDINGS

(September 24, 2008)

On September 10, 2008, concurrent with its Motion to Limit the Scope of the Proceeding or, in the Alternative, to Disqualify Counsel for Complainant Capital One Services, Inc. ("Motion to Limit"), Bank of America filed a Motion to Stay Proceedings ("Motion to Stay"). Capital One Services, Inc. (Capital One) has filed its Answer to Bank of America's Motion to Limit today. The issues raised by the Motion to Limit are now ripe for resolution by the Commission. Accordingly, an order staying the proceedings is unnecessary, and the Motion to Stay should be denied.

The Commission Rules of Practice and Procedure do not contain any provision authorizing a stay in a complaint proceeding. In certain circumstances, the Commission may stay a rate proceeding if the Postal Service fails to provide specific, required information, and then only "until satisfactory compliance is achieved." 39 C.F.R. §2001.56. A delay in such situations appropriately impacts the Postal Service, the party seeking to implement rates changes but refusing to provide specified information. See *also* 39 C.F.R. §3001.194. In contrast, a stay in a complaint proceeding is more likely to inflict harm on the Complainant. In fact, Capital One's Complaint alleges ongoing

harm to the Complainant from the Postal Service's discriminatory actions, and a stay in its ability to pursue its Complaint would exacerbate this harm.

The Motion to Stay fails to explain fully why Bank of America feels a stay is necessary. It cites vague "due process" considerations without bothering to articulate how proceeding with the Complaint, which Bank of America joined voluntarily as a full participant, somehow deprives it of "due process." Nor does it explain how Bank of America would be prejudiced or otherwise harmed if these Complaint proceedings continue pending resolution of its Motion to Limit in the normal course. That Bank of America may be "forc[ed] . . . to interject itself into the process to protect its interests," Motion to Stay at 1, reflects a tactical decision made by Bank of America, and not a reason to stay complaint proceedings in which numerous other parties have an active, ongoing, and vested interest.

If the Commission grants Bank of America's request to limit the scope of the proceedings, then, by its own account, Bank of America has no further interest in the Complaint. See Motion to Limit at 1 ("Bank of America takes no position on the merits of Capital One's claim that it is entitled to an NSA on the same terms as those embodied in the Bank's NSA."). Similarly, if the Commission grants Bank of America's motion to disqualify counsel for Capital One, Capital One may well have reason to request a stay. Bank of America, however, would not.

Finally, if the Motion to Limit is denied in part or in full, Bank of America is in no different or worse position than it is right now, and no concern articulated in its Motion to Stay warrants putting every other party on hold just because one party—Bank of America—perceives a threat to its interests. Moreover, the progress made by

Complainant and the Postal Service in resolving discovery disputes informally would be halted.

Accordingly, Capital One respectfully requests that the Commission deny the Motion to Stay.

Respectfully submitted,

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