

RULING NO. C2008-3/14

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Complaint of Capital One Services, Inc.

Docket No. C2008-3

PRESIDING OFFICER'S RULING ON
PUBLIC REPRESENTATIVE MOTION TO COMPEL

(Issued September 5, 2008)

The Postal Service filed an objection to interrogatories from the Public Representative (PR/USPS-2 and -4) on August 21, 2008.¹ Those interrogatories sought average read and accept rates for recent First-Class and Standard Mail sent by Bank of America and Capital One Services, Inc. (Capital One), respectively. The Objection was premised on grounds of commercial sensitivity, and that the data is pre-decisional and subject to non-disclosure agreements with the respective parties.

The Public Representative filed a motion to compel responses to these interrogatories on August 26, 2008.² The Motion states counsel for the Postal Service acknowledges the applicable non-disclosure agreements contain "escape clauses" that permit disclosure ordered by the Commission. The Public Representative does not dispute the commercial sensitivity of the information sought and requests the interrogatory answers be made subject to appropriate protective conditions. Finally, it

¹ Objection of the United States Postal Service to Interrogatories of Public Representative (PR/USPS-2 and 4), August 21, 2008 (Objection)

² Public Representative Motion to Compel Responses to Interrogatories to United States Postal Service (PR/USPS-2, 4), August 26, 2008 (Motion).

points out that the objection does not explain how the requested data is pre-decisional to any identified decision.

The Postal Service filed an opposition to this motion on September 2, 2008.³ The Response focuses on the potential commercial sensitivity of the information, but does not contend protected conditions would be inadequate or contradict representations that the non-disclosure agreements allow information to be provided subject to a proper Commission ruling.

For the first time, the Postal Service also raises relevance, contending “Bank of America’s performance data . . . do not inform the issues in this case.” The Public Representative did not address relevance, as it was not part of the initial Postal Service Objection.

It is not yet clear what constitute “the issues in this case,” and the Postal Service does not elaborate on its contention. It appears from the two similar questions at issue here that the Public Representative seeks to explore whether differences in the read and accept rates of Bank of America and Capital One mail might cause them to be not “functionally equivalent” or “similarly situated.” Absent more specific representations about what facts may form the basis for a decision in this case, it seems that the questions are reasonably drawn to lead to discovery of admissible evidence relevant to the subject matter of this complaint.

There is no dispute that the subject interrogatories seek information that could be commercially sensitive. Answers to these interrogatories are to be subject to the protective conditions already developed for similar information. See P.O. Ruling C2008-3/9.

³ Response of the United States Postal Service to Public Representative Motion to Compel Responses to Interrogatories (PR/USPS-2 and -4), September 2, 2008 (Response).

RULING

The Public Representative Motion to Compel Responses to Interrogatories to United States Postal Service (PR/USPS-2, -4), filed August 26, 2008, is granted as described in the body of this ruling.

Dan G. Blair
Presiding Officer