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

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POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

Docket No. MC96-3

SPECIAL SERVICES REFORM, 1996

SUPPLEMENTAL COMMENTS OF UNITED STATES POSTAL SERVICE TO MOTION  
TO STRIKE MAJOR MAILERS ASSOCIATION WITNESS BENTLEY'S NEW  
ANALYSIS  
(November 21, 1996)

The United States Postal Service hereby supplements its oral motion to strike Major Mailers Association ("MMA") witness Bentley's new analysis, first presented at the hearing on November 19, 1996. Tr. 6/2010 and 2029-31. These supplemental comments are filed pursuant to the Presiding Officer's ruling that such comments could be made by close of business today. Tr. 6/2032. The Postal Service moves to strike the three pages of analysis appearing at Tr. 6/2039-41, as well as all questioning of and discussion by Mr. Bentley concerning his analysis, contained at Tr. 6/2009, line 6 through 2010, line 3; 2036, line 13 through 2038; and 2044, line 4 through 2046, line 8. This material<sup>1</sup> must be stricken from the record for four reasons.

First, allowing such material into the record at this late stage of the proceeding, where the opportunity for written discovery, oral cross-examination and preparation of any rebuttal testimony will be severely circumscribed, is a denial of due process. Witness Bentley's new analysis must be subject to the full range of discovery and rebuttal applicable to all intervenor testimony. These discovery rights must not be limited either in scope or in duration. Both written and oral

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<sup>1</sup> Throughout this pleading any use of the terms "analysis" or "material" is intended to include all portions of the transcript, cited above, which the Postal Service is moving to strike.

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discovery must be allowed and the time to conduct such discovery must be adequate. Had Mr. Bentley filed the analysis as part of his original testimony on September 30, 1996, the Postal Service would have had a full month to conduct written discovery, would have had several weeks to prepare for oral cross-examination, and would have had several weeks after that to prepare any rebuttal testimony.

As it now stands, there are only slightly more than two weeks remaining until rebuttal testimony is due.<sup>2</sup> This would not allow sufficient time for discovery and rebuttal on even the most simple, straightforward analysis. Mr. Bentley's new analysis is neither simple nor straightforward. In the limited amount of time the Postal Service has had to examine Mr. Bentley's analysis, the Postal Service has been able to identify a number of issues requiring explanation or clarification.<sup>3</sup> For one thing, the Postal Service cannot read some of Mr. Bentley handwritten notations. An example is the handwritten notation at Tr. 6/2039. Does this read "With and Without Adjustment for *Accrued* Costs?"

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<sup>2</sup> The only alternative would be to extend the procedural schedule. The Postal Service does not want the schedule extended. No participant should be forced into requesting an extension in order to fully exercise its due process rights because of another participant's tardy filing of new materials, in this or any other docket. Such an outcome would wreak havoc upon everyone's ability to adhere to a procedural schedule.

<sup>3</sup> Counsel for MMA kindly has offered to engage in whatever informal discovery might be convenient for the Postal Service. While the Postal Service appreciates this offer and believes that informal discovery often can be helpful, there still is insufficient time here to subject witness Bentley's new analysis to full scrutiny, whether on a formal or informal basis. Even if witness Bentley were to respond to Postal Service questions informally and expeditiously, slightly over two weeks is not sufficient time to conduct a comprehensive review and testing on the record of Mr. Bentley's analysis.

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As another example, the middle figure in column 5, is recorded as \$33,225,443 (in thousands) and is referenced in footnote 3 as "52,530,344 \* .6325." The arithmetic is accurate, if calculated according to the footnote. If Mr. It should be noted, however, that the .6325 factor from Docket No. R94-1, Appendix D is rounded. If the multiplication is carried out using the calculated factor (.632533559) rather than the rounded factor of .6325, then the resulting figure is \$33,227,205 (in thousands), a difference of \$1,762 (in thousands). As this illustration points out, the Postal Service questions whether Mr. Bentley's calculation is proper.

Moreover, it is entirely unclear what the results of this page represent, what they are used for, or what they might be intended to be used for. For example, Mr. Bentley in the second and third rows of columns 4,5, and 6, apparently applies the percentage of cost determined to be attributable by *the Postal Service* in Docket No. R94-1 to the total accrued costs used by *the Commission* in Docket No. R94-1. In the third row of columns 1, 2, and 3, Mr. Bentley apparently applies the percentage of costs determined to be attributable by *the Commission* in Docket No. R94-1 to the total accrued costs used by *the Postal Service* in Docket No. R94-1. No reason for these comparisons is evident from the document. What do they mean? What relevance do they have to this proceeding or to any other?

As another example, Mr. Bentley makes an adjustment to PRC attributable costs at Tr. 6/2041. column 5. The Postal Service has been able to determine how this adjustment was made, no thanks to Mr. Bentley, who provides no documentation explaining the mechanics of the adjustment. Basically, Mr. Bentley derives adjusted PRC Attributable Costs (column 5) by dividing PRC projected

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volume (column 4) by USPS projected volume (column 3) times PRC attributable costs (column 2). It is bad enough that the mechanics were left unexplained, but there is absolutely no explanation *why* this adjustment was made. What is the purpose here? The Commission and the Postal Service use different cost models as well as different volume forecasting models. Is Mr. Bentley trying to make the costing models or the volume forecasting models or both comparable?

The Postal Service is justified in expecting that these questions are only the tip of the iceberg, and that a fuller examination of Mr. Bentley's new analysis would reveal a multitude of other questions. The number of issues immediately identified makes it clear why all such analyses must be subject to adversarial scrutiny on the record. Also, it is not clear that Mr. Bentley's new analysis relies exclusively upon record materials from Docket No. R94-1. To the extent that it relies upon any extra-record materials from that Docket, it suffers from the same flaws as his original testimony and would need to be stricken from the record of this proceeding on the same basis.

The second reason Mr. Bentley's new analysis should be stricken from the record is because it directly contradicts one of the underpinnings of his original testimony, and thereby raises the issue of whether Mr. Bentley is recanting that earlier testimony. Mr. Bentley repeatedly stressed the importance of using "the approved costing methodology." For example, see Tr. 6/1894, lines 8-10; 1897, line 21 through 1898, line 3. He defined the "approved" Commission methodology as that used in the Commission's Docket No. R94-1 Further Recommended Decision. Tr. 6/1918. His new analysis, however, uses the Commission costing methodology underlying the Docket No. R94-1 initial Recommended Decision. There were changes made by the Commission between

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its initial and further Recommended Decisions. PRC Further Recommended Decision, Docket No. R94-1, at 35-40. Many of the numbers in Mr. Bentley's new analysis would change if he had used what he defines as the "approved" methodology. For example, at Tr. 6/2039, row 1, columns 1, 2 and 3 would change to: \$52,536,723 (accrued cost), \$34,177,187 (attributable cost), and 65.05% (percent attributable). Obviously, the other figures on that page which are derived from these three numbers also change. In fact, the only figures which would remain the same on that page are the Postal Service figures in row 1, columns 4, 5, and 6. To file, at the last minute, contradictory testimony intensifies the due process concerns discussed above.

The third reason Mr. Bentley's new analysis cannot be entered into evidence in this proceeding is because MMA itself has admitted that the basis for this entire analysis is problematic and outdated. MMA specifically requested and was granted a brief extension of time to file Mr. Bentley's original testimony on the grounds that PRC-LR-1 and 2 provided more recent data which Mr. Bentley desired to include in his testimony. MMA clearly intended not to use the Docket No. R94-1 data which it now so desperately seeks to include in the record of this proceeding, choosing instead to rely (inappropriately) upon data presented in PRC-LR-1 and 2. MMA stated:

*The new Library References filed by the Commission Staff provide more recent data not available to MMA when its testimony was prepared. The new data contained in these Library References effectively supersede the data MMA used in its original prepared testimony. Now that these new data are available, it makes no sense to have MMA submit its testimony as originally prepared. That would merely compound the problem of using inconsistent data, requiring a future modification.*

*Major Mailers Association's Motion for Limited Extension of Time to File Testimony and Request for Shortened Answering Period, September 24, 1996 (emphasis*

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added). Why should material, which MMA itself conceded was effectively superseded, be admitted into the record? MMA itself acknowledged that Mr. Bentley's analysis using Docket No. R94-1 information would involve use of "inconsistent data" and would require "future modification" to its testimony. MMA should be held to its initial assessment concerning the worthlessness of Mr. Bentley's new analysis and it should be stricken from the record.<sup>4</sup>

Fourth and finally, counsel for MMA most certainly did not lay an adequate foundation for admission of this analysis into the record. All counsel for MMA did was attempt to have Mr. Bentley tie his analysis to a very general statement in his testimony concerning the dollar consequences of using different methodologies. Tr. 6/2036-38. In fact, in his testimony, Mr. Bentley followed up on this general statement with specific figures which he claimed "used the most recent cost information available" - PRC LR-1 and 2. Tr. 6/1895-96. The fact that there may be other material which MMA believes support this general statement - material

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<sup>4</sup> It has been suggested that if the Presiding Officer determines not to admit this material into evidence, it might be useful as a library reference. Tr. 6/2031. Also, OCA-LR-7, which purports to summarize and compare certain Docket No. R94-1 costs, volumes and revenues, suddenly materialized just yesterday. The OCA in recent dockets -- MC96-1 and MC96-2 -- has fallen into the annoying and procedurally flawed habit of filing unsponsored library references very late in the proceeding, in lieu of testimony, and then citing to them on brief to prove its case. As Special Rule 5 provides, "Library material is not evidence unless and until it is designated and sponsored by a witness." Moreover, OCA-LR-7 also raises any number of questions. For example, it cites its source as Appendix G from Docket No. R94-1, both the initial and further recommended decisions. Many of the numbers in OCA-LR-7 contain decimal places, which Appendix G does not. Additionally, some formulas are cited as the source for various numbers, but the numbers are hard-coded and apparently not derived from the formulas. In any event, the Postal Service will oppose any attempts to treat these materials as if they were record evidence.

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which it initially had chosen to discard—is hardly a proper evidentiary foundation.

For all of the foregoing reasons, as well as those discussed at hearing on Tuesday, November 19, 1996, the Postal Service's motion to strike Mr. Bentley's new analysis and related references from the record of these proceedings must be granted.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

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#### CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.

  
Susan M. Duchek

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