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

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OFFICE OF THE SECRETARY

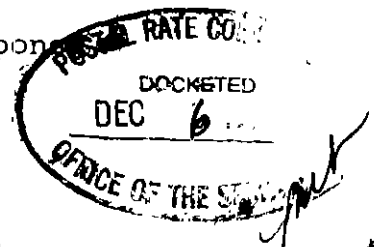
Docket No. MC96-3

SPECIAL SERVICES FEES
AND CLASSIFICATIONS

MAJOR MAILERS ASSOCIATION'S ANSWER
TO POSTAL SERVICE'S MOTION FOR RECONSIDERATION
OF PRESIDING OFFICER'S RULING NO. MC96-3/28

Major Mailers Association responds to the Postal Service's request, filed yesterday, that the Presiding Officer change his Ruling No. MC96-3/28. In that ruling the Presiding Officer denied the Service's motion to strike portions of MMA witness Bentley's testimony during cross-examination and that witness' testimony during his redirect examination. Rather than prolong the already-extensive pleadings regarding Mr. Bentley's testimony, MMA will limit itself to this brief response.

A. The Postal Service's Real Objection
Goes to the Weight To Be Accorded
To Mr. Bentley's Testimony, Not To
Whether That Testimony Is Admissable



The Postal Service now argues that "[t]he real question is whether the [Bentley] analysis is reliable..." (Motion, p. 1). The Postal Service has not shown that Mr. Bentley's testimony is unreliable, but the Presiding Officer has given the Service every opportunity to do so. (See POR No. MC96-3/28, pp. 5-7.)

In any event, evidence does not become inadmissible because one party contests its reliability. In line with both statutes and court decisions, this Commission's Rules of Practice direct that "relevant and material evidence which is not unduly

repetitious or cumulative *shall* be admitted." (Rules of Practice §31(a). Italics supplied.) (See also MMA's Nov. 25 Response to USPS' Supplemental Comments, pp. 9-10.)

B. The Postal Service's Opportunities To Contest Mr. Bentley's Testimony Negate Any Claim That Due Process Was Denied

The Service's "due process" concerns are overblown. While Mr. Bentley was on the witness stand, the Service had the right to recross-examine him about the "new" matter. The Service declined on the ground that it had insufficient time to prepare additional questions. (See Motion, note 2.) And the Service now complains that "the discovery schedule does not...provide for oral cross-examination of witness Bentley" (*Id.* at p. 3). But, at the November 19 hearing, MMA counsel offered to have Mr. Bentley recalled at a later date (Tr. 6:2011), and the Presiding Officer assured the Postal Service that it could request such a recall in its supplemental filing (*Id.* at 2033). The Postal Service's failure to request a recall of Mr. Bentley can be treated as a waiver.

In any event, the Postal Service still has ample time to prepare additional testimony rebutting Mr. Bentley. It is futile for the Service to complain that "the discovery schedule does not allow time for follow-up written discovery" (Motion. p. 3). The Service has not taken advantage of MMA's continuing offer to make Mr. Bentley "available at any time, in person or by telephone, for formal or informal data conferences to answer any questions the Service has about" any of the material. (See MMA's Nov. 22 letter, attached to MMA's Nov. 25 Response to USPS Supplemental Comments.)

Finally, the Service has manufactured its own problem by failing to comply with the Commission's lawful orders. Since the beginning of this proceeding, the Commission has been asking the Postal Service to prepare data about the effect of the two costing methodologies. Mr. Bentley testified that he prepared his own computations only as a "second-best" substitute for the data requested by Commission (Tr. 6:1895). If the Service had honored the Commission's requests, the Service would already possess the data needed to confirm or rebut Mr. Bentley's calculations.

WHEREFORE, MMA requests that the Commission deny the Postal Service's Motion for Reconsideration, dated December 5, 1996.

Respectfully submitted,



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December 6, 1996

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document (1) upon the U.S. Postal Service by facsimile and (2) upon the other parties by First-Class Mail.


Jeffrey Plummer

December 6, 1996