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

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OFFICE OF THE SECRETARY

SPECIAL SERVICES REFORM, 1996

Docket No. MC96-3

COMMENTS OF THE UNITED STATES POSTAL SERVICE CONCERNING FURTHER  
PROCEDURES RELATED TO MAJOR MAILERS ASSOCIATION WITNESS  
BENTLEY'S NEW ANALYSIS  
(December 17, 1996)

The United States Postal Service hereby files comments concerning further procedures related to Major Mailers Association witness Bentley's new analysis, first proffered at the hearing on November 19, 1996. The Presiding Officer ruled that the Postal Service should inform the Commission by close of business today whether it desired to recall witness Bentley for oral cross-examination and whether it wanted to prepare rebuttal testimony concerning the new analysis. See Tr.10/3626-27.

Since the issuance of Presiding Officer's Ruling No. MC96-3/28 on November 27, 1996, the Postal Service has filed three sets of discovery requests on witness Bentley -- on December 5, December 11, and December 17, 1996. Responses to the last set, just filed yesterday, have not been received. It is possible that those responses will generate further follow-up questions. The Postal Service thus is not in a position to fully assess with whether oral cross-examination and rebuttal testimony are warranted. Nonetheless, the Presiding Officer's ruling at Tr. 10/3626-27, requires the Postal Service, even under these circumstances, to indicate its intentions. For the reasons discussed below, the Postal Service has concluded that it has no choice but to not request that Mr. Bentley be recalled for oral cross-examination, nor will it file rebuttal testimony concerning Mr. Bentley's new analysis.

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examination, nor will it file rebuttal testimony concerning Mr. Bentley's new analysis.

The fact that the Postal Service will not request recall of Mr. Bentley or file rebuttal testimony should not be read, however, as any sort of acknowledgement that the Postal Service feels that it has been given the opportunity to exercise the full due process rights to which it is entitled. The Postal Service finds itself presented with a Hobson's choice. Were it not so late in the procedural schedule, the Postal Service may have decided to recall Mr. Bentley, to file rebuttal testimony, or both. Doing so at this stage, however, presents the very real possibility that the procedural schedule will be delayed -- an outcome not acceptable to the Postal Service, and not caused by any action of the Postal Service.


Moreover, even assuming for the sake of argument that the Postal Service exercised its full due process rights by virtue of the three rounds of discovery it has conducted, there can be no doubt that conducting that discovery in a compressed time frame over the last several weeks has caused the Postal Service to devote time and resources to this matter that would have been devoted to other activities in the case. Thus, while other parties were free to focus on rebuttal testimony and to begin activities connected with brief writing, the Postal Service had to devote time and resources to analyzing and conducting discovery on what amounts to late-filed new testimony. This, in and of itself, has placed the Postal Service at a disadvantage, and has thus impinged upon the Postal Service's due process rights.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.  
Chief Counsel, Ratemaking



Susan M. Duchek

#### 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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