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

SPECIAL SERVICES REFORM, 1996

Docket No. MC96-3

ANSWER IN OPPOSITION TO MOTIONS OF DAVID B. POPKIN  
TO COMPEL COMPLIANCE WITH RULE 25(E) AND  
CORRECTIONS TO TESTIMONY

The United States Postal Service hereby responds to the Motion of David B. Popkin to Compel Compliance with Rule 25(e) (Compliance Motion) and the Motion of David B. Popkin to Compel Corrections to Testimony (Correction Motion), filed December 13, 1996.<sup>1</sup>

**BACKGROUND**

In his Compliance Motion, Mr. Popkin asks that the Postal Service be compelled to "provide new section numbers" reflecting the transfer of regulations from the Domestic Mail Manual Transition Book (DMMT) to the Postal Operations Manual (POM) and to evaluate the regulations in the POM to "ensure that the original answer[s to interrogatories] previously provided [are] still completely true and relevant in those instances where there has been a change in wording." The Correction Motion relies upon the facts alleged in the Compliance Motion and otherwise seeks similar relief with respect to witnesses' direct testimony and oral cross-examination responses.

**INFORMAL COMMUNICATIONS**

While Mr. Popkin's Motions address a pertinent issue, the Compliance Motion grossly mischaracterizes the oral response he received from postal counsel. As

<sup>1</sup> This pleading also responds to the Presiding Officer's request, Tr. 9/3328, for clarification of the status of regulations affecting special services.

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accurately reflected in the second paragraph of the Compliance Motion, on December 2 Mr. Popkin contacted postal counsel and was told he would receive a return call on December 9. The Postal Service was given to understand that Mr. Popkin's immediate concern was that any argument he might base upon the cited DMMT regulations would be undercut by postal arguments that those regulations had been changed; Mr. Popkin also expressed more general concern about the state of the record following the regulatory changes and specific concern regarding POM § 653.6. During that week, a review of the DMMT regulations cited in this case was completed to determine whether there had been any substantive changes in the regulations. When Mr. Hollies left a message on December 9 with Mr. Popkin's answering machine, and in a further discussion the next day, Mr. Hollies emphasized that the Postal Service had in fact looked for substantive changes, found none, and concluded that arguments based upon the cited DMMT regulations were not threatened at all by the changes.

#### **DMMT NOTICE**

Mr. Popkin's motions were evidently crafted without the benefit of reviewing the Postal Service filing that appears to dispose of the matters at issue here. See Notice Concerning Status of Regulations Published in the Domestic Mail Manual Transition Book (filed December 11, 1996) (DMMT Notice). The DMMT Notice explained that the Postal Service published a notice in the *Federal Register* on October 23, 1996 announcing the transfer or rescission of specified regulations in the DMMT. The Postal Service attached a copy of the *Federal Register* notice, together with its cross-reference tables, to the DMMT Notice so that any interested party can locate the renumbered provisions. The Postal Service also filed the latest edition of the POM, the new location for the vast majority of transferred provisions, as Library Reference

SSR-161 in this docket, and identified the procedure by which parties could purchase their own copies. DMMT Notice at 1–2. The Postal Service further advised that it had examined whether oral and written responses were affected by substantive changes and concluded that participants could continue to rely upon the DMMT citations previously provided without risk to the substance of their arguments. *Id.*<sup>2</sup>

The DMMT Notice further addressed the three most significant regulatory changes that were identified to illustrate how minor they were. *Id.* at n. 1.<sup>3</sup> The third of these, POM § 653.6, is addressed in greater detail below.

### **POM § 653.6**

As stated briefly in footnote 1 of the DMMT Notice, former DMMT § 156.25, which specified that customers may choose the rural route from which they obtain service when multiple routes pass their boxes -- at least in uncongested areas, was moved to POM § 653.6. Since section 653.6 instead empowers districts to make these decisions, it does appear to make a substantive change. Upon inquiry during the week of December 2–9 with Delivery Services, counsel was informed that no real change had occurred; for operational reasons the old DMMT rule had come to be administered as the POM rule is now phrased.

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<sup>2</sup> The same is true of Ms. Needham's testimony, USPS-T-8, at 118, 120-21, the only Postal Service witness to cite the DMMT in direct testimony.

<sup>3</sup> Two of the three former DMMT provisions do not substantively affect testimony offered by postal witnesses. For example, the time limit reported in former DMMT § 915.52(a)(3) regarding when regular carriers on business routes may also carry special delivery mail was changed from 8:30 a.m. to 10:00 a.m. in POM § 815.2(a)(3). Similarly, a nonsubstantive change was wrought to former DMMT § 162.3, which provided that "Philatelic products are designed and sold to promote the enjoyment and the informative value of stamp collecting." This provision was revised in POM § 211(b) to state: "Stamp products are designed and promoted to expand interest in the hobby of philately by demonstrating both the fun and the historic value of stamps."

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The "big picture" reason relates to the Postal Service goal of automating the mail stream and the requirements that bulk mailers respect address hygiene and update their address lists at regular intervals. Address changes where a single delivery point comes to be served by a different route and post office are exceptionally difficult to manage in developing the various address verification software products upon which mailers rely. Accordingly, customer requests to change from one route to another have not been being approved. The DMMT rule did provide that the Postal Service, for its own operational reasons, could refuse to approve such change requests and this is exactly what has been happening. In effect, the exception to the rule had swallowed the rule itself, rendering the appearance of customer choice illusory. This change occurred long before the new POM appeared, rather than resulting from Issue 7 of the POM.

#### **CONCLUSION**

The Postal Service has evaluated the evidence it has provided in support of its Request in this docket in light of the recodification of its regulations and concluded that those changes have no substantive impact on this case. It has provided a means for participants and the Commission to locate and review the successor citations, and confirm the Postal Service conclusion that arguments based on the cited DMMT provisions lose none of their vitality because of the changes. Through the DMMT Notice and this pleading the Postal Service has further explained why the one apparent change noted by Mr. Popkin and the Presiding Officer in fact effects no change. Accordingly, the relief requested by Mr. Popkin has already been provided

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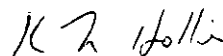
and his request is moot.<sup>4</sup>

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.  
Chief Counsel, Ratemaking



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Kenneth N. Hollies  
Anthony F. Alverno

#### 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.



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Kenneth N. Hollies

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December 19, 1996

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<sup>4</sup> To the extent Mr. Popkin seeks to have the Postal Service file revised responses to interrogatories, such effort would certainly not be required for written cross-examination received into evidence as of October 23, 1996, the date upon which pertinent DMMT regulations were announced. Special Rule of Practice No. 2C requires only that participants "update or correct responses . . . up until the date that answers are accepted into evidence as written cross-examination." The Special Rule of Practice serves the interests of administrative efficiency and closure, and the lack of substantive rule changes means that these interests are properly served here.