

February 13, 2004

Mr. Steven W. Williams
Secretary
Postal Rate Commission
1333 H Street, N.W.
Washington, DC 20268-0001

RE: Docket No. C2004-1
Complaint of Time Warner Inc. et al. Concerning Periodical Rates

Dear Mr. Williams:

This letter states the opposition of the American Postal Workers Union, AFL-CIO (the APWU) to Postal Rate Commission consideration of the Complaint filed in the above-referenced matter. The Commission should not consider this Complaint on its merits for several reasons.

1. First, the Complaint relies on R2001-1 rate case assumptions. It is impossible to make a reasonable estimate of the impact of the proposed changes on the Postal Service's finances using R2001-1 rate case data and assumptions. As we pointed out to the Commission in our filings with the Commission in MC2002-1¹, MC2002-2², and MC2002-3³, the R2001-1 numbers are not correct.

1 "The APWU opposes incorporation of materials from Docket No. R2001-1 in this case or any other. That case, as the Postal Service acknowledges at footnote 1 of its April 24, 2002 statement and conditional motion, was settled on a non-precedential basis. The data for R2001-1 was outdated when it was submitted, having been developed and prepared prior to September 11, 2001, and was made even more out of date by the anthrax attacks of October, 2001. See *Opinion and Recommended Decision Approving Stipulation and Agreement, Docket No. R2001-1*, paragraphs 1001 - 1009. Finally, because R2001-1 was not fully litigated, using data from that case may lead to litigation of issues in this case that were not litigated in R2001-1 because of the settlement of R2001-1." *Statement Of American Postal Workers Union, AFL-CIO Concerning Statement Of United States Postal Service Concerning Compliance With Filing Requirements and Conditional Motion for Waiver* (May 23, 2002).

2 *Statement Of American Postal Workers Union, AFL-CIO Concerning Statement Of United States Postal Service Concerning Compliance With Filing Requirements and Motion for Waiver* (October 17, 2002).

3 *Statement of American Postal Workers Union, AFL-CIO Concerning Statement of United States Postal Service Concerning Compliance with Filing Requirements and Motion for Waiver* (October 17, 2002).

Furthermore, the Commission and the parties know those data are not correct. Regarding data relevant to this Complaint, the Commission should note that actual FY 2003 volumes and revenues were substantially lower than those forecast for the test year after rates (also FY2003) for Outside-County periodicals.⁴ The Commission can not evaluate a claim of revenue neutrality based on estimates that have been proven to be substantially incorrect.

2. The “Complaint” in this case is proposing a radical departure from the current methodology for determining rates. The Postal Service raises serious legal objections to the processing of this Complaint, but the Commission should dismiss the Complaint for other reasons as well. The change proposed in this Complaint would abandon the policy of treating editorial content differently from advertising content, a practice that has been in place since 1917. While it is not possible to reasonably estimate the overall revenue impact of this proposal, it is clear that some mailers would be disadvantaged. Mailers sending periodicals with relatively high editorial content or with a large percentage of it going to far zones would see their rates increase faster than other rates.

The complainants’ methodologies appear to differ from the accepted “cost avoided” and “efficient component pricing” methodologies underling current rate setting. A mailer’s per piece postage would be computed building up from a base price and adding certain postal processing costs related to how the mail is presented. Such changes in methodology require a great deal of scrutiny. It would be difficult or impossible to estimate the degree to which mailers could avoid higher costs in the complainants’ recommended rates by modifying their mailing practices, or to predict the actual revenue and cost impact of such a shift on the Postal Service. Accordingly, even apart from technical legal issues, the Commission should reject the Complaint because it would not be appropriate for the Commission to consider such fundamental changes in Periodicals rates and classifications except in a rate case.⁵

3. We observe that if the Commission entertains this Complaint it would set a precedent that could multiply and complicate rate proceedings in the future. As many stakeholders in rate matters have observed, rate procedures may need to be made more flexible so rates can be adjusted more frequently. But a major reason for those recommendations is that rate increases should be made more

4 A comparison of the periodicals volume and revenue reported by the Postal Service in the FY2003 Revenue, Pieces and Weights report to the volume and revenue shown in Appendix G of the PRC’s *Opinion and Recommended Decision Approving Stipulation and Agreement*, Docket No. R2001-1 shows TYAR (FY2003) revenues for Outside-County periodicals were expected to be \$2.510 billion, but the actual revenue was \$2.160 billion, almost 14 percent lower than test year estimates based on the R2001-1 assumptions. Similarly, R2001-1 assumed that total after rates periodicals volume would be 9.96 billion pieces; but FY2003 volume was 9.32 pieces, 6 percent lower than estimated.

5 The APWU reserves the right to challenge the legality of any proceeding based on the Complaint in this case.

predictable. No one has advocated making the rate procedure a free-for-all.

4. The Complaint does not allege that the current rates are illegal. Whether there are better ways to set rates – and a possible set of rates that are more consistent with rate setting criteria or fairer to all concerned is a matter for a future omnibus rate case. The Commission should not impose upon interested parties the considerable expenditure of resources needed to participate in any proceedings to deal with such a complex complaint. This is especially true when the Commission has no reasonable hope of resolving the issues raised in a satisfactory manner; and the issues will be revisited in the next omnibus rate case – no matter what happens with this Complaint.

5. The complainants, other interested mailers, and the Postal Service have and will continue to discuss the issues raised in the Complaint. The Commission should not interfere with that process.

The Complaint in this case is highly irregular and should be dismissed.

Respectfully submitted,

William Burrus, President
American Postal Workers Union, AFL-CIO