

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

COMPLAINT OF TIME WARNER INC. ET AL.
CONCERNING PERIODICALS RATES

Docket No. C2004-1

INSTITUTIONAL RESPONSE OF TIME WARNER INC.,
CONDE NAST PUBLICATIONS,
A DIVISION OF ADVANCE MAGAZINE PUBLISHERS INC.,
NEWSWEEK, INC.,
THE READER'S DIGEST ASSOCIATION, INC.,
AND TV GUIDE MAGAZINE GROUP, INC.
TO ABM/TW ET AL.-T3-2,
REDIRECTED FROM WITNESS GORDON
(June 10, 2004)

Time Warner Inc., Condé Nast Publications, a Division of Advance Magazine Publishers Inc., Newsweek, Inc., The Reader's Digest Association, Inc., and TV Guide Magazine Group, Inc. (collectively, Time Warner Inc. et al.) hereby provide the institutional response of each and all of them, jointly and severally, to American Business Media interrogatory ABM/TW et al.-T3-2, redirected from witness Gordon, filed May 27, 2004.

The interrogatory is stated verbatim and is followed by the response.

Respectfully submitted,

s/

John M. Burzio
Timothy L. Keegan
Burzio & McLaughlin
Canal Square, Suite 540
1054 31st Street, N. W.
Washington, D. C. 20007-4403
Telephone: (202) 965-4555
Fax: (202) 965-4432
E-mail: burziomclaughlin@covad.net

COUNSEL FOR
TIME WARNER INC.

s/

David Orlin
Senior Vice President Strategic Sourcing
Advance Magazine Publishers Inc.
4 Times Square
New York, NY 10036
Telephone: (212) 286-6370

ON BEHALF OF
CONDÉ NAST PUBLICATIONS, A DIVISION
OF ADVANCE MAGAZINE PUBLISHERS INC.

s/

Angelo Rivello
Senior Vice-President, Worldwide
Distribution and Manufacturing
Newsweek, Inc.
333 Route 46
Mountain Lakes, NJ 07046-0917
Telephone: (212) 445-5039
E-mail: angelonw@newsweek.com

ON BEHALF OF
NEWSWEEK, INC.

s/

Michael A. Brizel
Senior Vice President and General
Counsel
The Reader's Digest Association, Inc.
Reader's Digest Road
Pleasantville, NY 10570-7000
Telephone: (914) 244-5069
Fax: (914) 244-7807

ON BEHALF OF
THE READER'S DIGEST ASSOCIATION, INC.

s/

John P. Loughlin
President
TV Guide Magazine Group, Inc.
1211 Avenue of the Americas
4th Floor
New York, NY 10036
Telephone: (212) 852-7560

ON BEHALF OF
TV GUIDE MAGAZINE GROUP, INC.

Response of Time Warner, Condé Nast, Newsweek, Reader's Digest, and TV Guide to ABM/TW et al.-T3-2, Redirected from Witness Gordon

ABM/TW et al.-T3-2 In light of your testimony concerning changes in the communications media and elsewhere since 1917, and your conclusion that zoning the editorial pound rate will not "cause the country to be divided by these zones," please provide a statement by each of the complainants (that is, individual statements by each of the five complainants) setting forth (a) whether that complainant believes that Periodicals should continue to be granted a postal rate preference to reflect the educational, cultural, scientific, and informational value of Periodicals' editorial content and (b) if so, setting forth all of the reasons why. Each statement should include the names and titles of the person or persons whose input it reflects, including the original drafter and any others that provided input.

RESPONSE OF TIME WARNER, CONDE NAST, NEWSWEEK, READER'S DIGEST, AND TV GUIDE

There is a clear distinction between Congress' establishment of an unzoned editorial rate and its later provision for considering the educational, cultural, scientific, and informational ("ECSI") value of Periodicals class mail. The unzoned editorial rate was enacted in 1917 when, after an intensive lobbying campaign led by big-city newspapers and magazines with national readerships, warning that zoned rates for periodicals might foster "sectionalizing tendencies," bring into being "a sectionalized press," divide the country into "sectional publishing zones in the East, Midwest and West" and, ultimately, transform it into "three distinct zones of thought and feeling,"¹

¹ See Docket No. R90-1, Rebuttal Testimony of Richard B. Kielbowicz on behalf of American Business Press (ABP-RT-3), at 10 (quoting objections of big city newspapers to zoned rates proposed in original version of the War Revenue Act of 1917); and Wayne E. Fuller, The American Mail, Enlarger of the Common Life (Chicago, Univ. of Chicago Press, 1972), p. 146 (same).

No candid account of the legislative history of periodicals rates in the 19th and the first half of the 20th centuries would deny that publishing industry lobbying, congressional fear of the power of the press to influence opinion, and the desire to use the Post Office "as a means of communication and of the dissemination of knowledge for a widely scattered population in a new country" all played important roles, or that the exact nature and relative importance of those roles is not entirely clear. With respect to the third of these factors, a careful and judicious postal historian has written:

This reason for low postage on all types of mail, but especially on newspapers and magazines, has been expressed countless times in postal documents. While one can conjecture that this may have been a very real purpose in an era of poor communications facilities, the exact form it took as an influence on postal rates is unknown.

[footnote continues]

Response of Time Warner, Condé Nast, Newsweek, Reader's Digest, and TV Guide to ABM/TW et al.-T3-2, Redirected from Witness Gordon

Congress chose to introduce zoning in the rate for advertising in periodicals but to retain the existing unzoned rate for editorial matter.

Witness Gordon has explained that the world is a different place from what it was when that law was written. Today, periodical publications are but one of many avenues to disseminate information, and the unzoned editorial rate has far less significance than it did in 1917. As a result, our proposed rates include zoning of the entire weight of the publication and, if implemented, will facilitate reductions in Periodicals class costs.

The recognition of ECSI value in Periodicals Class mail is an entirely different matter. This provision, § 3622(b)(8), was added to the law in 1976 as one of the ratemaking factors that the Postal Rate Commission must consider when making a recommended decision:

(b) Upon receiving a request, the Commission shall make a recommended decision on the request for changes in rates or fees . . . in accordance with the policies of this title and the following factors . . .

.....

(8) the educational, cultural, scientific, and informational value to the recipient of mail matter. . . .

Neither the legislative history nor the ECSI provision itself suggests or hints that "educational, cultural, scientific, and informational value to the recipient of mail matter" describes a value that depends upon the distance such matter is transported by the Postal Service. Nor does any other provision of the law under which the Commission recommends rates state that an unzoned editorial rate is required or

Jane Kennedy, United States Postal Rates, 1845-1951 (doctoral dissertation, Columbia University, 1955), at 34 (preceding quotation is from the same source).

Response of Time Warner, Condé Nast, Newsweek, Reader's Digest, and TV Guide to ABM/TW et al.-T3-2, Redirected from Witness Gordon

should receive favorable consideration, although elsewhere in the same legislation Congress required that rates for other categories of mail not vary with distance.² The absence of any necessary connection between the ECSI provision and the unzoned editorial rate is strongly reinforced by the conclusion of the court in *Mail Order Ass'n. of America v. United States Postal Service*, 2 F.3d 408, 436 (D.C. Cir. 1993) that § 3622(b)(8) provides no legal or policy justification for an unzoned editorial rate. .

The educational, cultural, scientific, and informational value that periodical publications provide today is no less than when § 3622(b)(8) was enacted in 1976. That provision is still in effect, and ECSI remains a factor that the Commission must consider in the exercise of its ratemaking authority. The sentiment of Congress regarding this policy has not changed and is reiterated in the postal reform legislation that is currently moving through both houses (S 2468 and HR 4341). It is obvious that Congress does not intend to alter the policy of recognizing the ECSI value of Periodicals class mail when setting postal rates.

We agree with the past and present judgment of Congress that Periodicals class mail should receive a rate preference in recognition of its educational, cultural, scientific, and informational value. The rates and the classification structure we propose would not diminish the recognition that the Commission has accorded to the ECSI value of Periodicals and, in fact, recognizes ECSI through both a per-piece and a per-pound discount for editorial content. Clearly, our proposal reflects a belief that ECSI remains an appropriate factor to be considered in the establishment of Periodicals class rates.

² E.g., 39 U.S.C § 3683 ("Uniform rate for books; films; other materials"); and § 3623(d) (requiring "one or more classes of mail for the transmission of letters sealed against inspection," and that "the rate for each such class shall be uniform throughout the United States").

Response of Time Warner, Condé Nast, Newsweek, Reader's Digest, and TV Guide to ABM/TW et al.-T3-2, Redirected from Witness Gordon

This statement was drafted by James O'Brien, Director of Distribution & Postal Affairs, Time Incorporated, assisted by and in consultation with:

Michael J. Clayton, Senior Vice President, Operations, T.V. Guide Magazine Group, Inc.

Timothy L. Keegan, Burzio & McLaughlin, Counsel for Time Warner Inc.

Alice Kijak, Vice President, Global Operations Shared Services, The Readers Digest Association, Inc.

Howard Schwartz, Executive Director of Distribution Sourcing & Postal Affairs, Advance Magazine Publishers Inc.

Jack Widener, Director of Distribution, Newsweek, Inc.