

UNITED STATES OF AMERICA  
POSTAL RATE COMMISSION  
WASHINGTON, DC 20268-0001

Complaint of Time Warner Inc. et al.  
Concerning Periodicals Rates

Docket No. C2004-1

PRESIDING OFFICER'S RULING ON REVISED  
HEARING SCHEDULE AND RELATED MATTERS

(Issued June 18, 2004)

*Introduction.* Following review of the hearing schedule for the initial stages of this proceeding, American Business Media (ABM) raises several legal and practical concerns. Most of these relate to due process, given ABM's contention that the schedule may compromise its ability to review interrogatory responses; determine which ones to designate as written cross-examination; complete other preparations for cross-examination; and plan and prepare its own case. Request for Reconsideration of Presiding Officer's Ruling on Hearing Schedule by American Business Media, June 14, 2004 (Reconsideration Request). With the support of two other participants, ABM suggests certain adjustments in the schedule, including postponement of the late June hearings on the Complainants' testimony.<sup>1</sup> It also indicates that it would have difficulty filing its anticipated testimony (for which no submission deadline has yet been established) before Labor Day.

Time Warner et al. oppose the Reconsideration Request, due in part to the fact that certain arrangements, including some involving long-planned international travel for one witness, were made in reliance on the dates established in P.O. Ruling No. C2004-1/2. They prefer that the hearing dates remain as originally scheduled, but suggest that adjusting two interim filing dates might ameliorate ABM's concerns. This entails accelerating the deadline for submission of interrogatory responses, and extending, by

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<sup>1</sup> These participants are McGraw-Hill Companies (McGraw-Hill) and the National Newspaper Association (NNA). Reconsideration Request at 1.

one day, the deadline for filing certain designated cross-examination. Opposition of Time Warner Inc. et al. to Request for Reconsideration of Presiding Officer's Ruling on Hearing Schedule, June 17, 2004 (Opposition to Reconsideration Request) at 1-2, 5-6.<sup>2</sup>

*Discussion.* The schedule in this case, as in other Commission proceedings, was developed after soliciting participants' input and balancing several relevant factors. These include, among others, the extent and nature of the issues at stake; the stated availability of witnesses and counsel; the Commission's existing and anticipated workload; and substantive due process, which encompasses considerations such as fairness, reasonable notice, and adequate preparation time.

In this case, one outcome of the balancing process is that hearings on the Complainants' direct case were set for late June, rather than early or mid-July, as this appeared to have been more convenient for the witnesses involved. Another outcome of this was a shorter-than-standard time for designating certain interrogatory responses, coupled with explicit authorization of additional filing time. P.O. Ruling No. C2004-1/2, June 9, 2004, at 2. In short, the schedule that was developed may not have been viewed as ideal in all respects by any individual party in interest, but is nevertheless the product of a good-faith evaluation of how to accommodate several important concerns, including due process.

*Limited rescheduling deemed appropriate in this instance.* The Commission strives to adhere to its published schedules, but has never blindly followed them if subsequent developments indicate adjustments are in order. In this vein, I have considered whether the instant Reconsideration Request should be granted, especially in light of the large amount of discovery responses that will be received just prior to commencement of hearings under the current schedule. I have concluded that an extended postponement of hearings on the Complainants' direct case is not appropriate, but limited adjustments might better serve everyone's interests. Instead of

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<sup>2</sup> Individual participants appearing collectively as Time Warner Inc. et al. include, in addition to 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. They are also referred to in this ruling as the Complainants.

receiving the testimony of two witnesses (Stralberg and Gordon) on June 29, 2004, as originally scheduled, only one witness — Stralberg — will appear. Witness Stralberg is the witness who made international travel plans in reliance on the initial schedule. If counsel are unable to prepare cross-examination related to one or more discovery responses provided by witness Stralberg during the week prior to his appearance, he can be recalled at a future date.<sup>3</sup> Hopefully, this will not be necessary. Witness Gordon will be rescheduled for July 12, 2004.

Witness Schick is directed to appear, as originally scheduled, on June 30, 2004. The appearance of witness Mitchell, who will be providing responses to more than 80 requests submitted on the final two days for discovery, is rescheduled to appear after witness Gordon on July 12, 2004. Participants are directed to reserve July 13, 2004 in the event additional time is needed to complete witness Mitchell's cross-examination.

These adjustments address ABM's concerns about preparing for cross-examination, as the changes I am making will mean that only one witness will appear each day on the first two days of hearings, and witness Mitchell, the recipient of the largest number of interrogatories, will be rescheduled to mid-July. These revisions should lessen any unanticipated burden the original, more compressed schedule may have imposed. It also should allow ABM more time to review interrogatory responses and to make related preparations for cross-examination. At the same time, it limits the disruption to the schedules of the Complainants and their witnesses, who have made certain plans in reliance on the initial schedule.

*Complainants' suggestions relating to accelerated responses and additional time to file designations.* Notwithstanding their general opposition to major changes in the published hearing dates, Time Warner et al. offer to accelerate submission of their witnesses' interrogatory responses. Opposition to Reconsideration Request at 5. This would allow ABM and others more time to review answers than the original schedule contemplated. Time Warner et al. also suggest that participants be given an additional day to file designated cross-examination for witnesses Gordon and Stralberg. *Ibid.*

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<sup>3</sup> Three participants waited until the final day for discovery to submit questions to this witness.

These suggestions show that there are several ways to accommodate the type of concerns ABM raises; however, given the scheduling adjustments noted above, I find that there is no need to adopt the suggested changes to existing deadlines.

*Rebuttal testimony.* ABM acknowledges that P.O. Ruling No. C2004-1/2 provides that comments on the next stage of the proceeding will be entertained at the outset of the first day of hearings, but volunteers that it may have scheduling problems. Reconsideration Request at 2. Given my previous decision to reserve comments for the opening day of hearings, it would be premature to address ABM's statement at this time. I simply reiterate that I anticipate conducting a preliminary discussion about participants' plans and appropriate deadlines for the next stage of the proceeding. In light of the potential need to recall witness Stralberg, I will defer that discussion from the first to the second day of hearings. That discussion will now take place on June 30, 2004. Participants should be prepared to address this matter at that time, bearing in mind that my colleagues and I are interested in maintaining a timetable in this proceeding that is consistent with developing a full and comprehensive record, yet avoiding excessive delay.

*Other matters.* For clarification, hearings will be held in the Commission's hearing room, and begin at 9:30 a.m. each day. Designations of written cross-examination are due three working days prior to each witness's appearance; however, as is the Commission's longstanding practice, additional designations will be permitted for good cause shown.

## RULING

1. The Request for Reconsideration of Presiding Officer's Ruling on Hearing Schedule by American Business Media, filed June 14, 2004, is granted in part.

2. Hearings on the direct case of the Complainants will take place as follows:
  - a. Witness Stralberg is directed to appear, as originally scheduled, on Tuesday, June 29, 2004.
  - b. Witness Schick is directed to appear, as originally scheduled, on June 30, 2004.
  - c. Witness Gordon, originally scheduled to appear on June 29, 2004, is directed to appear on July 12, 2004.
  - d. Witness Mitchell, originally scheduled to appear on June 30, 2004, is directed to appear on July 12, 2004.
  - e. Participants are directed to reserve July 13, 2004 in the event additional time is needed to complete witness Mitchell's cross-examination.
3. Designations of responses to written cross-examinations are due three working days prior to each witness's appearance, as provided in the Commission's rules of practice.
4. Hearings will be held in the Commission's hearing room and begin at 9:30 a.m.
5. Participants are directed to be prepared to address, at the outset of the June 30<sup>th</sup> hearing, their plans regarding the submission of their own cases and appropriate deadlines.

George Omas  
Presiding Officer