

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 MOTION  
TO COMPEL A RESPONSE TO ABM/TW ET AL.-T1-91

(Issued June 18, 2004)

At issue is whether TW et al. witness Mitchell should be compelled to answer a question posed by American Business Media (ABM) asking whether he agrees with the Commission's treatment of Alaska air costs, and why he does or does not agree.<sup>1</sup>

*Basis for objection.* Time Warner et al. objects on grounds that ABM's question is not "reasonably calculated to lead to admissible evidence" within the meaning of section 26(a) of the Commission's rules of practice." Objection at 1. In the Complainants' view, this is the case because the issue that has arisen in previous dockets relating to Alaska air costs has concerned the Commission's treatment of certain intra-Alaska air transportation costs "as institutional, although they are recognized as being volume variable in nature." Ibid., citing PRC Op. R97-1, para. 3397, at page 220. Complainants assert that in contrast to those circumstances, they have raised no issue in this docket pertaining to the Commission's choice of methodology in classifying costs as attributable and institutional. They further assert that the existing rates, as well as the evidence and methodologies underlying their

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<sup>1</sup> See Interrogatory ABM/TW et al.-T1-91(a)-(c), filed May 28, 2004; Objection of Time Warner Inc. et al. to Interrogatory ABM/TW et al.-T1-91 to Witness Mitchell, June 7, 2004 (Time Warner et al. Objection); Motion of American Business Media to Compel Response to Interrogatory ABM/TW et al.-T1-91 to Witness Robert Mitchell, June 8, 2004 (ABM Motion to Compel); Answer of Time Warner Inc. et al. to Motion of American Business Media to Compel Response to Interrogatory ABM/TW et al.-T1-91 to Witness Robert Mitchell, June 15, 2004 (Time Warner et al. Answer).

adoption in Docket No. R2001-1, must be treated as legally binding precedent in this docket for all issues that are not part of the basis on which the Commission's complaint jurisdiction (under 39 U.S.C. § 3662) has been invoked. *Id.* at 1-2. For these reasons, they argue that the instant interrogatory falls outside the scope of the issues properly before the Commission in this docket and does not appear "reasonably calculated to lead to admissible evidence." *Id.* at 2.

*ABM.* In support of a compelled response, ABM claims that witness Mitchell's testimony has been introduced "for the primary purpose" of contending that the Periodicals rate structure should be modified because it is not, or perhaps not sufficiently, cost based. *ABM Motion to Compel* at 1. It then asserts that Mitchell contends throughout his testimony that it is both appropriate and necessary that individual mailers pay all of the true costs of handling their mail, and claims that he offers "no compromise" on this position. *Id.* at 1-2, citing *TW et al. T-1* at 12, 17 and 48.

Moreover, ABM contends that Mitchell would impose costs without regard for and without apparent investigation of, whether certain costs calculated by Stralberg and reflected in the Mitchell rate design and rates "are in the same sense as Alaska air costs assignable to certain mail pieces but should not be attributed to those pieces for ratemaking purposes." *Id.* at 2.

ABM then notes several issues it hopes to pursue, and says it will contend that in those situations and others, just like the Alaska air situation, costs that are attributable to a particular segment of the mail should be "socialized" among a larger group of mailers. *Id.* at 4. Thus, it says it is both "fair and relevant" to inquire of witness Mitchell whether and under what circumstances he would consider it appropriate to depart from completely "cost-based" rates. *Id.* at 4.

*Answer.* Time Warner et al. note that ABM's explanation of the relevance of the question in issue appears to be based on allegations of factual matters that it (ABM) intends or hopes to present in its direct case to support an argument that the Commission's treatment of Alaska air costs should be extended to the Periodicals subclass. While they say ABM has the prerogative "to present evidence and argue for

new or novel theories concerning the attribution or assignment of costs”, they contend that nothing ABM states regarding what it will present is relevant to the issues Complainants have presented in this docket. Time Warner et al. Answer at 1. Instead, the Complaint and supporting evidence are based on a straightforward application of existing Commission costing methodologies to the Periodicals class, based on a new analysis of Periodicals cost data and the introduction of new cost drivers that have a causal connection to the manner in which subclass costs are incurred and how they vary with volume. Complainants assert that Alaska air costs are not mentioned in the Complaint, or in any evidence supporting it, and that ABM must support changes to existing Commission methodologies through its own witnesses. Id. at 2.

*Ruling.* Complainants are correct that Alaska air costs do not factor into their direct case, and that the burden of developing a plausible theory for applying a similar theory to Periodicals rates must lie with some other party, should that avenue be pursued. Neither witness Mitchell, nor any other of the Complainants’ witnesses, can fairly be placed in the position of carrying another participant’s responsibility in this regard. At this point, I think it is fair to assume, based on ABM’s representations so far, that it recognizes that it has an independent responsibility to develop its theories and any related rate implications through its own witnesses.

At the same time, the Complainants’ case, and the Mitchell testimony in particular, are shot through with numerous observations about policy considerations that have informed — or arguably should inform — Periodicals rates. Thus, a fair reading of the question is that is it simply asking whether the witness, who is offered as an expert in how rates should reflect costs, can state whether, and why, he agrees with the Commission’s current treatment of Alaska air costs. In this sense, an answer may provide material perspective on various policy options. Thus, I view the question as reasonably calculated to lead to admissible evidence, and the witness is directed to answer the question.

RULING

The Motion of American Business Media to Compel Response to Interrogatory ABM/TW et al. T1-91 to Witness Robert Mitchell, filed June 8, 2004, is granted.

George Omas  
Presiding Officer