

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 RESPONSES OF TIME WARNER INC. ET AL.
TO APWU/TW ET AL.-T1-4-5, REFERRED FROM WITNESS MITCHELL
(July 12, 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 their responses as institutions to American Postal Workers Union follow-up interrogatories APWU/TW et al.-T1-4-5, filed July 2, 2004, referred from witness Mitchell.

Each interrogatory is stated verbatim and followed by the response.

Respectfully submitted,

s/ _____
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APWU/TW et al.-T1-4. To the extent that you cannot answer any part of this inquiry, please refer it to someone who can. Please refer to your response to APWU/TW et al.-T1-2.

a). Can we assume that none of the complainants in this case had any written communications from or to Postal Service officials concerning subjects raised in this complaint, whether or not the correspondence was in the form of a formal complaint? If not, please provide copies of the correspondence.

b) You provide a general description of the type of forums in which various complainants have participated and where discussions of issues raised in this complaint may have been raised. You suggest that these forums are a matter of public record. Other than Commission proceedings, please provide a list of all forums in the last five years at which any of the complainants have raised the subjects of this complaint. For each, provide copies of any agendas, minutes, presentations, etc. or provide citations to such documents and provide the names of complainants and postal officials in attendance.

c) Please provide a list of any private meetings any complainant may have had with postal officials in the last five years during which issues raised in this complaint were discussed – even if the issues were not raised as a formal complaint, but perhaps raised as a matter of rate design or product redesign. For each meeting, provide the date, people in attendance, the issues discussed relevant to this complaint, any agreements or understandings reached – including agreements to study issues or continue to discuss issues. If the meetings generated written documents relevant to the issues in this complaint, provide copies of the documents.

RESPONSE

a) Your question asks about "any written communications from or to Postal Service officials *concerning subjects raised in this complaint*" (emphasis supplied). That formulation could be construed so broadly as to take in virtually every aspect of Periodicals rates and classifications, costing methodology, and rate design, and as to extend indefinitely into the past. So construed, it might encompass, for example, nearly every communication between Time Inc. management and Postal Service management since the passage of Reorganization in 1970.

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For the purposes of this response, we will construe your question as seeking information about "correspondence or written communications between the complainant[s] . . . and the Postal Service . . . *which relate to the subject matter of the complaint*" within the meaning of section 83(c) of the rules of practice, and we will assume that the term "subject matter of the complaint" in rule 83(c) includes both the jurisdictional basis for this proceeding--i.e., the failures of the current rates, adopted in R2001-1, to adequately conform to the policies of the Act, such that Commission jurisdiction over this complaint lies under § 3662 of the Act-- and the substantive gravaman of the complaint--i.e., the position that what has been variously described as "cost-based rates," "bottom-up pricing," a "rate grid," or "cost-based rate incentives for more efficient mailer practices" are necessary to the achievement of the fundamental objectives and policies of the Act.

So construed, the answer to subpart a) is that none of the complainants has had any such written communications or correspondence.

- b) Your question asks about "forums in the last five years at which any of the complainants have raised the subjects of this complaint." For purposes of this answer, we will construe the words "the subjects of this complaint" as synonymous with the words "subjects raised in this complaint" in subpart a).

Yet that limitation by itself is insufficient to bring subpart b) within a manageable compass. For example, Time Warner's testimony and briefs in every omnibus postal rate case since at least Docket No. R87-1 have expressed essentially the same general views as are expressed in the complaint concerning the need for cost-based rates to provide mailers with incentives for more efficient mailing practices. Mr. O'Brien is the Director of

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Distribution and Postal Affairs for Time Incorporated. His advocacy of "cost-based rates," "bottom-up pricing," a "rate grid," "rate incentives for more efficient mailing practices," etc., is probably what he is most identified with in the mailing community. He has espoused that position on Time Warner's behalf in formal written and oral testimony to this Commission and to the President's Commission on the Postal Service.¹ But he has also espoused it informally many times and in various settings over the past several years, during which time he has served as a member of the joint USPS/Industry Periodicals Operations Review Team and the MTAC (Mailers Technical Advisory Committee) Package Integrity Task Force, as Chairman of the Postal Committee for the Magazine Publishers of America, and as Chairman of the Postal Policy Committee and a member of the Executive Committee and Board of Directors of PostCom, and has "visited numerous printing plants, lettershops, freight forwarders and consolidators, U.S. Postal Service facilities, foreign posts, and Postal Service competitors, such as Federal Express."²

We have therefore construed subpart b) as requesting information regarding either formal or substantial statements by complainants in forums where Postal Service personnel were present rather than as extending to all casual or impromptu comments or discussions that may have occurred in public forums where Postal Service personnel may have been present.

¹ Docket No. R2000-1, Direct Testimony of James O'Brien on Behalf of Alliance of Nonprofit Mailers, American Business Media, Coalition of Religious Press Associations, Dow Jones & Company, Inc., Magazine Publishers of America, Inc., The McGraw-Hill Companies, Inc., National Newspaper Association, and Time Warner Inc. (TW-T-2) (May 22, 2000), Tr. 24/11166 at 11190-94; Testimony of James R. O'Brien, Director, Distribution & Postal Affairs, TIME INC., Before the President's Commission on the United States Postal Service (May 28, 2003).

² Docket No. R2000-1, Direct Testimony of James O'Brien (TW-T-2), Tr. 24/11169.

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The following statements come within the terms of subpart b), so construed and limited:

- Meeting at USPS Headquarters, "Product Redesign--Cost Based Rates," June 25, 2003. James R. O'Brien gave one of several presentations on "Examples of How Cost Based Rates Might Work" and was on a discussion panel on "Periodicals Class Issues." Also present were Nick Baranca, Don O'Hara, and Cheryl Beller of the U.S. Postal Service. The agenda for the meeting is Attachment A to this response.
- Testimony of James R. O'Brien, Director, Distribution & Postal Affairs, TIME INC., Before the President's Commission on the United States Postal Service (May 28, 2003), available at <http://www.treas.gov/offices/domestic-finance/usps/meetings.html>.

c) Your question asks about meetings "during which issues raised in this complaint were discussed." For the purpose of this response, we construe the words "issues raised in this complaint" as synonymous with the words "subjects raised in this complaint" in subpart a). So construed, the following meetings come within the terms of subpart c):

- James R. O'Brien of Time Warner had two meetings with Postmaster General Potter, on December 3 and 17, 2003. At both meetings, Mr. O'Brien and Mr. Potter were the only people in attendance.

On December 3, Mr. O'Brien informed Mr. Potter that Time Warner Inc. (Time Warner) was considering filing a complaint case concerning Periodicals rates, briefly outlined the logic behind the case, and

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indicated that Time Warner had not yet made a final decision on whether to file the complaint. The meeting was intended as a professional courtesy to the Postal Service.

On December 17, Mr. O'Brien informed Mr. Potter that Time Warner et al. had decided to file a complaint case regarding the Periodicals class rate structure. He indicated that the complaint was not intended as hostile toward the Postal Service but was being undertaken in the hope of controlling Periodicals class costs and providing the incentive for mailers to change their behavior. Mr. Potter replied that he appreciated being informed of the complainants' intentions and that, while the Postal Service generally does not view complaints favorably, there was nothing that the Postal Service could do to stop the complainants from filing the complaint.

- On December 17, 2003, Mr. O'Brien also had a meeting with Postal Service Chief Marketing Officer Anita Bizzotto. They were the only two people in attendance. Mr. O'Brien informed Ms. Bizzotto of the complainants' intention to file a complaint case. Ms. Bizzotto reiterated Mr. Potter's sentiments regarding the Postal Service's general dislike for complaint cases and appreciation for being informed of the complainants' intentions.
- On December 16, 1998, James R. O'Brien met with Ashley Lyons, Douglas Madison, Donald O'Hara, and Altaf Tafique of the Postal Service. Mr. O'Brien presented the initial draft of an experimental Periodicals class rate structure that he referred to as a "rate grid" (Attachment B to this response). He expressed the view that such a

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rate structure was necessary because the existing rates in many cases lacked a strong correlation to Postal Service costs. He gave as an example a carrier route bundle on a 5-digit pallet versus the same bundle on an SCF pallet, with both pallets being entered at the destination SCF. Although the two bundles would receive vastly different mail processing with significantly different associated costs, they both paid the same postage under the existing rate structure. Mr. O'Brien stated that the proposed rate grid would recognize these cost differences in the rate structure and provide the incentive for mailers to prepare more efficient mail. At the end of the meeting, the Postal Service representatives indicated that they would review the structure.

**Attachment A to Institutional Response of Time Warner et al. to
APWU/TW et al.-T1-4**

PRODUCT REDESIGN – COST BASED RATES

June 25, 2003 – 10:30 AM – 4:00 PM, Ben Franklin Room – 475 L'Enfant Plaza SW, WASH DC

Meeting Agenda

10:30-10:45

USPS Vision: Nick Barranca

10:45-11:00

Meeting Goals and Ground Rules: Bob O'Brien

11:00-2:00 (Working Lunch)

Presentations/Examples of How Cost Based Rates Might Work:

Presenters: Jim O'Brien, Don O'Hara, Val Scansaroli, Joe Lubenow, Peter Moore

Discussion: All

10:30-10:45

Initiatives/concepts that enable Cost Based Rates:

- **Co-palletization: Brad Nathan**
- **Co-mailing: Joe Schick**
- **Merging of Standard and Periodical flats: Joe Lubenow**

2:30-3:00

Discussion of Standard Mail Issues:

Leader: Anita Pursley

**Standard Mail Representatives: Martin Bernstein, Jerry Cerasale,
Gene Del Polito, Nancy Fischman, Vince Giuliano, Brad Nathan, Joe Schick**

- **The State of the Class as seen by the Industry representatives**

3:00-3:30

Discussion of Periodical Class Issues

Leader: Val Scansaroli

**Periodicals Representatives: Rita Cohen, Joyce McGarvey, Jim O'Brien,
David Schaefer, Howard Schwartz, David Straus**

- **The State of the Class as seen by the Industry representatives**

3:30-4:00

Wrap-up and Next Steps

PERIODICALS CLASS EXPERIMENTAL RATE STRUCTURE (DEC. 16, 1998)

NEW RATES xls

PIECE	BUNDLE TYPE	CONTAINER	ENTRY				
			DDU	SCF	DESTINATING TRANSFER HUB	ORIGINATING TRANSFER HUB	OTHER
NON-BARCODED	CARRIER ROUTE	5 DIGIT PALLET					
NON-BARCODED	CARRIER ROUTE	CARRIER ROUTE SACK					
NON-BARCODED	CARRIER ROUTE	5 DIGIT SACK					
NON-BARCODED	CARRIER ROUTE	3 DIGIT PALLET					
NON-BARCODED	CARRIER ROUTE	3 DIGIT SACK					
NON-BARCODED	CARRIER ROUTE	SCF PALLET					
NON-BARCODED	CARRIER ROUTE	SCF SACK					
NON-BARCODED	CARRIER ROUTE	ADC PALLET					
NON-BARCODED	CARRIER ROUTE	ADC SACK					
BARCODED	5 DIGIT	5 DIGIT PALLET					
BARCODED	5 DIGIT	5 DIGIT SACK					
BARCODED	5 DIGIT	3 DIGIT PALLET					
BARCODED	5 DIGIT	3 DIGIT SACK					
BARCODED	5 DIGIT	SCF PALLET					
BARCODED	5 DIGIT	SCF SACK					
BARCODED	5 DIGIT	ADC PALLET					
BARCODED	5 DIGIT	ADC SACK					
BARCODED	5 DIGIT	MIXED ADC SACK					
NON-BARCODED	5 DIGIT	5 DIGIT PALLET					
NON-BARCODED	5 DIGIT	5 DIGIT SACK					
NON-BARCODED	5 DIGIT	3 DIGIT PALLET					
NON-BARCODED	5 DIGIT	3 DIGIT SACK					
NON-BARCODED	5 DIGIT	SCF PALLET					
NON-BARCODED	5 DIGIT	SCF SACK					
NON-BARCODED	5 DIGIT	ADC PALLET					
NON-BARCODED	5 DIGIT	ADC SACK					
NON-BARCODED	5 DIGIT	MIXED ADC SACK					
BARCODED	3 DIGIT	3 DIGIT PALLET					
BARCODED	3 DIGIT	3 DIGIT SACK					
BARCODED	3 DIGIT	SCF PALLET					
BARCODED	3 DIGIT	SCF SACK					
BARCODED	3 DIGIT	ADC PALLET					
BARCODED	3 DIGIT	ADC SACK					
BARCODED	3 DIGIT	MIXED ADC SACK					
NON-BARCODED	3 DIGIT	3 DIGIT PALLET					
NON-BARCODED	3 DIGIT	3 DIGIT SACK					
NON-BARCODED	3 DIGIT	SCF PALLET					
NON-BARCODED	3 DIGIT	SCF SACK					
NON-BARCODED	3 DIGIT	ADC PALLET					
NON-BARCODED	3 DIGIT	ADC SACK					
NON-BARCODED	3 DIGIT	MIXED ADC SACK					
BARCODED	ADC	ADC PALLET					
BARCODED	ADC	ADC SACK					
BARCODED	ADC	MIXED ADC SACK					
NON-BARCODED	ADC	ADC PALLET					
NON-BARCODED	ADC	ADC SACK					
NON-BARCODED	ADC	MIXED ADC SACK					
BARCODED	MIXED ADC	MIXED ADC SACK					
NON-BARCODED	MIXED ADC	MIXED ADC SACK					

NOTE: ALL PIECE RATES ARE SUBJECT TO THE EXISTING EDITORIAL PIECE DISCOUNT
 FORMAT FOR ADVERTISING AND EDITORIAL WEIGHT REMAINS THE SAME AS TODAY.

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APWU/TW et al.-T1-5. Please refer to your answer to APWU/TW et al.-T1-1. §3001.82 states that only complaints which raise an issue concerning whether or not rates or services contravene the policies of the Act shall be entertained in a complaint docket. Is it your testimony that current rates contravene the policies of the Act? Does your testimony fully describe all the ways in which the complainants believe the current rates contravene the policies of the Act? If, as the complainants' rate design witness, you are unable to fully speak to this issue please refer the question to the person(s) who can.

RESPONSE

The ways in which complainants believe the current rates contravene the policies of the Act are stated in Docket No. C2004-1, Complaint Of 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., Concerning Periodicals Rates, filed January 12, 2004. The jurisdictional sufficiency of complainants' statement of issues was addressed in Commission Order No. 1399, Order on Periodicals Rate Complaint, March 26, 2004, at 11: "In the Commission's view, they have provided, throughout their extensive filing, a full and complete statement of their grounds, including specific reference to the postal rates involved and the policies to which it is claimed they do not conform."