

PRESIDING OFFICER'S
RULING NO. C2004-1/5

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 PROCEDURAL SCHEDULE
AND ON MOTIONS FOR LATE ACCEPTANCE

(Issued July 12, 2004)

I. Scheduling

At the outset of the June 30, 2004 hearing in this case, a discussion was held concerning development of a schedule for the remaining stages of this proceeding. This discussion covered, among other things, certain intervenors' concerns about potential work and vacation conflicts during the summer months and complainants' interest in submitting surrebuttal testimony.¹

One outcome of the discussion was widespread support for a post-Labor Day deadline for submission of intervenor testimony. Accordingly, I am setting September 9, 2004 as the deadline for submission of responsive testimony. Discovery on this testimony ends September 30, 2004. The discussion further indicated the potential for at least five or six pieces of intervenor testimony. Based on this possibility, the period of October 19 through October 22, 2004 is reserved for related hearings.

¹ Participants had been advised that this discussion would take place in P.O. Ruling No. C2004-1/3. In a written filing, counsel for the National Newspaper Association noted a scheduling conflict that precluded attendance at the discussion, and addressed various scheduling concerns. Comments of National Newspaper Association (NNA) on POR Ruling Number C2004-1/2, June 25, 2004.

To accommodate the Complainants' stated interest in an opportunity to file surrebuttal testimony, I am establishing October 28, 2004 as the deadline for this testimony. In line with established practice, this testimony is to be strictly limited to issues raised in the intervenors' testimony. The period of November 3 through 5, 2004 is reserved for surrebuttal hearings.

Initial briefs will be due November 22, 2004; reply briefs will be due December 6, 2004.

II. Other Procedural Action

A. Time Warner Inc. et al.²

Due to the complexities involved in providing an answer to a redirected interrogatory seeking extensive data from the five co-complainants, Time Warner Inc. et al. move for acceptance of witness Stralberg's answer to ABM/TW, et al.-T1-3 two weeks out of time. Motion for Late Acceptance of Response to ABM/TW et al.-T1-3, May 26, 2004 (Time Warner et al. Motion). In support of their position, Time Warner et al. note that preparation of the response required assembling, analyzing and organizing substantial amounts of data in a consistent format. In addition, they note that ABM was informed of the expected delay in responding, consented to the requested extension, and did not object to the motion being granted.

Given the substantial amount of data involved in the response at issue and the informal agreement counsel have reached, I find that no harm arises from the late filing; therefore, the Time Warner et al. Motion is granted.

² Consisting 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.

B. NNA

In a filing submitted one day out of time, the National Newspaper Association (NNA) submitted its notice of intent to cross-examine witnesses Mitchell and Gordon. In support of its filing, NNA notes that it is not requesting any designations in addition to those other parties already have designated, and explains that the reason for late filing was the result of a previously-disclosed prior engagement. Motion of National Newspaper Association (NNA) for Acceptance of Notice of Intent to Cross-Examine, July 8, 2004 (NNA Motion). As there appears to be no prejudice occasioned by this request, the NNA Motion is granted.

C. Follow-up Written Cross-Examination (Witness Stralberg)

In a filing submitted July 6, 2004, the Postal Service requests permission to file follow-up written cross-examination of witness Stralberg. The follow-up question relates to a discovery response filed the day before witness Stralberg's June 29th appearance. United States Postal Service Request for Follow-Up Written Cross-Examination of Time Warner Inc. et al. Witness Stralberg, July 6, 2004 (Postal Service Motion).

The Service indicates that it did not have time to formulate the question in time for oral cross-examination, and states that Time Warner et al. are not opposed to the instant request.

The possibility that limited additional time might be needed due to the deadlines was acknowledged in a previous ruling and from the bench during the hearing. Given this fact and the lack of opposition, the Postal Service Motion is granted.

RULING

1. The attached schedule, which reflects the procedural stages and associated dates referred to in the body of this ruling, is hereby adopted for use in this proceeding.
2. The Motion of Time Warner Inc. et al. for Late Acceptance of Response to ABM/TW et al.-T1-3, filed May 26, 2004, is granted.
3. The Motion of National Newspaper Association (NNA) for Acceptance of Notice of Intent to Cross-Examine, filed July 8, 2004, is granted.
4. The United States Postal Service Request for Follow-Up Written Cross-Examination of Time Warner et al. Witness Stralberg, filed July 6, 2004, is granted.

George Omas
Presiding Officer

Docket No. C2004-1
Complaint of Time Warner et al. Concerning Periodicals Rates
Procedural Schedule

Responsive Testimony	September 9, 2004
Discovery on Responsive Testimony Ends	September 30, 2004
Hearings on Responsive Testimony	October 19 – 22, 2004
Surrebuttal Testimony	October 28, 2004
Hearings on Surrebuttal Testimony	November 3 – 5, 2004
Briefs	November 22, 2004
Reply Briefs	December 6, 2004