

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

COMPLAINT OF TIME WARNER INC. et al.
CONCERNING PERIODICALS RATES

Docket No. C2004-1

OBJECTION OF THE MCGRAW-HILL COMPANIES
TO COMPLAINANTS' DISCOVERY REQUESTS
TW et al./MH – 3, 4.c (1), 6, 10.b (1), 11.c (1), 12.d (1) and 14.
(August 24, 2004)

Pursuant to sections 26(c) and 27(c) of the Commission's rules of practice, The McGraw-Hill Companies, Inc. ("McGraw-Hill") hereby objects, on the grounds stated below, to the following interrogatories and requests for production of documents directed by Complainants to McGraw-Hill: TW et al./MH – 3, 4.c (1), 6, 10.b (1), 11.c (1), 12.d (1) and 14.

OBJECTION TO TW et al./MH – 3:

McGraw-Hill objects in part to TW et al./MH – 3, to the extent that it requests McGraw-Hill to provide a representative copy of a recent mailing statement (form 3541) for each McGraw-Hill publication that is distributed through the U.S. Postal service under Periodicals rates. McGraw-Hill so objects on grounds that the mailing statements contain commercially sensitive information and are not relevant, much less necessary, to the resolution of any issue before the Commission, particularly in view of McGraw-Hill's undertaking to provide Complainants with information in response to the myriad

specific interrogatories directed by Complainants to McGraw-Hill. See *Presiding Officer's Ruling No. R2000-1/72*, May 30, 2000, at 7-8 (the Commission "has never previously found it appropriate to order the production of individual postage statements"); Objection to TW et al./MH – 4.c (1) and 6, *infra* (incorporated by reference). Complainants' counsel informed representatives of McGraw-Hill in an August 3, 2004 telephone conference that Complainants were withdrawing their request for mailing statements.

OBJECTION TO TW et al./MH – 4.c (1) and 6:

TW et al./MH – 4.c (1) requests an electronic copy of each mail.dat file used to estimate the impact of the rates proposed by Complainants on specific McGraw-Hill publications. TW et al./MH – 6 requests an electronic copy of a mail.dat file (for a typical issue) for each McGraw-Hill publication for which mail.dat files are normally generated. McGraw-Hill objects to these requests on grounds that the mail.dat files contain commercially sensitive, proprietary and confidential information and are not relevant, much less necessary, to the resolution of any issue before the Commission, particularly in view of McGraw-Hill's undertaking to provide Complainants with information in response to the myriad specific interrogatories directed by Complainants to McGraw-Hill.

As stated in *Presiding Officer's Ruling No. R2000-1/102*, July 31, 2000:

The Commission's policy regarding the discovery of intervenors' commercially sensitive information has been reiterated in a series of rulings – *absent exceptional circumstances, such data need not be produced*. See POR R90-1/66, September 7, 1990, at 2 ["The Commission's policy is to refrain, absent exceptional circumstances,

from compelling participants to file data that can reasonably be found commercially sensitive.” *Id.*]; POR R94-1/64, August 19, 1994, at 5. See also POR R87-1/148, November 10, 1987, at 2.

In prior rate proceedings PSA, among others, has requested data concerning UPS’s domestic operations, e.g., volumes transported by air and ground transportation.... [M]otions to compel were denied not because the data requested were not relevant, but rather because PSA failed to demonstrate exceptional circumstances that would warrant the production of an intervenor’s commercially sensitive information [citing POR R94-1/64 at 5; and POR R97-1/104 at 3].

Plainly, the data PSA seeks are commercially sensitive. ... The balance between disclosure and commercial sensitivity rests, initially, on whether the data are *essential* for the Commission’s deliberations, including, importantly, evaluating the direct case of the party resisting disclosure. ... The Commission can resolve ... issues affecting Parcel Post Mail without recourse to the data PSA seeks. Consequently, ... disclosure is ... [not] required....

Id. at 2-4 (emphasis added; footnotes omitted). See also *Presiding Officer’s Ruling No. R2000-1/112*, August 10, 2000 (similar); *Presiding Officer’s Ruling No. R2000-1/97*, July 25, 2000, at 8 (“disclosure of sensitive information when direct competitors in the marketplace are parties must be given careful consideration to protect the interests of each party”) (“the proponent of a new rate or classification sometimes has a higher burden for disclosure”); *Presiding Officer’s Ruling No. R94-1/22*, June 3, 1994, at 3-4 (where “[t]he relevance of more finely detailed data is not apparent,” and its disclosure “could conceivably be used by competitors to [the disclosing party’s] detriment,” there is “no evident justification for ordering its provision [even] under protective conditions” that would otherwise be warranted).

A mail.dat file is a relational database containing hundreds of interconnected fields that each describe particular characteristics that can exist within a mailing. The

mail.dat files maintained by McGraw-Hill include all of the information contained in the corresponding mailing statements (form 3541) of its publications as well as extensive other information that is commercially sensitive, proprietary and confidential. Disclosure of its mail.dat files to competitors could well result in competitive disadvantage and harm to McGraw-Hill.

A number of Complainants' publications currently compete with McGraw-Hill publications (and Complainants are otherwise prime potential competitors). For example, McGraw-Hill publishes *Business Week* which competes directly with the Time Warner publication *Fortune*, and the McGraw-Hill publication *Architectural Record* competes with the Conde Nast publication *Architectural Digest*. Moreover, McGraw-Hill competes across publications with Complainants in the general advertising market. Further, McGraw-Hill competes with Complainants for press time in markets where printing capacity is limited.

Disclosure of McGraw-Hill's mail.dat files could reveal its distribution plans for achieving the best combination of delivery speed and low cost. Disclosure of McGraw-Hill's mail.dat files could also reveal marketing strategy and efforts through use of additional entry points and special editions. Further, disclosure of the mail.dat files could reveal significant elements of McGraw-Hill's printing arrangements that are normally held confidential. "If competitors know the details of [a party's] volume, they will be in a better position to fashion initiatives to capture that volume." *Presiding Officer's Ruling No. R90-1/29*, June 19, 1990, at 3. "Therefore, the [party's] strong interest in protecting

its commercial secrets prevails, regardless of the availability of protective conditions.” *Id.* at 4.

If the mail.dat files have any relevance at all, which is not apparent, they are certainly not *essential* to the Commission’s resolution of any issue before it. Disclosure of the mail.dat files is therefore not required (even with full protective conditions that would otherwise be warranted) under the Commission’s longstanding precedent governing commercially sensitive data. McGraw-Hill has undertaken to answer each of Complainants’ comprehensive specific interrogatories regarding details of McGraw-Hill’s mailings under Periodicals rates — an undertaking which obviates any legitimate interest of Complainants in mail.dat file data. McGraw-Hill has further undertaken to provide Complainants with Excel spreadsheets generated in estimating the impact on McGraw-Hill publications of the rates proposed by Complainants.

In telephone conferences between representatives of Complainants and McGraw-Hill representatives, the only purported justification offered by Complainants for seeking the mail.dat files was that they supposedly might show sacks with few pieces. But that subject is addressed by TW et al./MH – 8, which McGraw-Hill is undertaking to answer. Moreover, any information that Complainants seek to discover from mail.dat files regarding McGraw-Hill publications -- which comprise a relatively small portion of the Outside County Periodicals subclass as a whole -- could hardly be determinative of any issue presently before the Commission in this proceeding, where McGraw-Hill has yet to file any testimony. Under the Commission’s precedent, any attenuated relevance of

such information is overborne by the commercial sensitivity of McGraw-Hill's mail.dat files.

OBJECTION TO TW et al./MH – 10.b (1), 11.c (1), 12.d (1) and 14:

Interrogatory TW et al./MH – 10.b (1) asks how many subscribers of *Aviation Daily* receive the publication via (1) Email – Text/ASCII, (2) Email – PDF, (3) Print – U.S. Delivery, and (4) Print -- Non-U.S. Delivery, respectively. Interrogatory TW et al./MH – 11.c (1) requests similar disaggregated volume information for *Homeland Security and Defense*. Interrogatory TW et al./MH – 12.d (1) asks how many subscribers to *Inside Energy* receive the printed version and how many receive the web version.

Interrogatory 14 in part requests the number of subscribers that currently receive *Business Week* in electronic form. McGraw-Hill objects to these discovery requests on grounds that they seek commercially sensitive, proprietary and confidential information which is not relevant, much less necessary, to the resolution of any issue before the Commission.

Aviation Daily, *Homeland Security and Defense*, and *Inside Energy* are newsletters that are mailed First-Class, rather than under Periodicals rates. None of the hard-copy or electronic volume data requested by these interrogatories is public information. It is not audited by any circulation audit bureau. The Commission has well recognized that similar volume data is commercially sensitive. See *Presiding Officer's Ruling No. R2000-1/102*, July 31, 2000, at 3 ("Plainly, the [UPS volume] data PSA

seeks are commercially sensitive”); *Presiding Officer’s Ruling No. C99-1/23*, August 7, 2001, at 4 (“past or projected volume ... statistics ... warrant claims of commercial sensitivity”); *Presiding Officer’s Ruling No. C99-1/22*, June 11, 2001, at 6 (“a count of domestic users of a new service in direct competition with products offered by Complainant and other vendors clearly constitutes sensitive business information”); *Presiding Officer’s Ruling No. R94-1/64*, August 19, 1994, at 5 (“disaggregated volumes ... of a business’ operations are clearly proprietary and commercially sensitive in character”).

Respectfully submitted,

/s/

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