

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

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

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Docket No. C2004-1

OBJECTION OF THE McGRAW-HILL COMPANIES  
TO COMPLAINANTS' DISCOVERY REQUEST TW et al./MH – T1 -11.  
(October 7, 2004)

Pursuant to sections 26(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 interrogatory directed by Complainants to McGraw-Hill  
witness Schaefer:

**TW et al/MH – T1 – 11:** Please refer to your testimony at page 4, n.  
2, where you state: "McGraw-Hill's total Periodicals postage in  
2003 was approximately \$17.5 million. We estimate that postage  
amounts to about 26% of the cost of manufacturing and distributing  
our Periodicals as a whole."

For each McGraw-Hill Periodicals class publication, please state:

- a. postage as a percentage of the cost of manufacturing and distributing that publication;
- b. postage as a percentage of the total costs of that publication;
- c. postage as a percentage of the total revenues of that publication.

McGraw-Hill objects to this interrogatory on grounds that it calls for commercially  
sensitive, proprietary and confidential information which is not relevant, much less

necessary, to the resolution of any issue before the Commission, and would be unduly burdensome to produce.

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. R90-1/29*, June 19, 1990, at 4 (a party's “strong interest in protecting its commercial secrets prevails, regardless of the

availability of protective conditions”); *Presiding Officer’s Ruling No. R94-1/22*, June 3, 1994, at 3-4 (“no evident justification for ordering its provision [even] under protective conditions”).

The information sought by TW et al/MH – T1 – 11 is commercially sensitive, proprietary and confidential. McGraw-Hill has already provided Complainants with current postage for each of its larger publications, as well as detailed current data from which postage can be derived for each of its other publications. Thus, to comply with Complainants’ present demand for the percentages of costs and revenues that is comprised of postage would enable Complainants to derive the manufacturing and distribution costs, the total costs, and the total revenues of each of McGraw-Hill’s Periodicals-class publications. McGraw-Hill does not publicly release such commercially sensitive information, which it treats as confidential.

The Commission has long held that such cost and revenue data constitute commercially sensitive information that intervenors will not normally be required to disclose, even under protective conditions, and especially to competitors.<sup>1</sup> See, e.g., *Presiding Officer’s Ruling No. R94-1/64*, August 19, 1994 at 5 (“Numerical data revealing the disaggregated volumes, revenues and costs of a business’ operations are clearly proprietary and commercially sensitive”); *Presiding Officer’s Ruling No. R97-1/104*, February 27, 1998, at 1-2 (agreeing that “revenue[] and costing data” are “clearly

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<sup>1</sup> McGraw-Hill competes across publications with Complainants in the general advertising market, and for press time in markets where printing capacity is limited. Further, 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*.

proprietary, and commercially sensitive”); *Presiding Officer’s Ruling no. C99-1/23*, August 7, 2001, at 4 (similar).

Even if the information sought by TW et al./MH – T1 - 1 had some relevance, it is certainly not *essential* to the Commission’s resolution of any material issue before it. The information sought could not be determinative of any material issue because, among other things, McGraw-Hill publications comprise a relatively small portion of the Outside County Periodicals subclass as a whole. Under the Commission’s precedent, any attenuated relevance of such information is overborne by its commercial sensitivity.

Moreover, it would be unduly burdensome to compile the requested information, particularly for the 74 smaller-circulation Periodicals published by McGraw-Hill’s Dodge and Standard & Poor’s divisions. McGraw-Hill estimates that it would take approximately 60 work-hours (over several weeks time) to compile such information.

It bears pointing out in this regard that McGraw-Hill has already expended very considerable resources – 150 work-hours, conservatively -- to provide Complainants in good faith with a wealth of information in response to Complainants’ extraordinarily comprehensive and detailed interrogatories and other discovery requests. See, e.g., Responses of the McGraw-Hill Companies, Inc. to TW et al./MH – 1 – 5 and 7 – 10 (filed September 9, 2004). Complainants should not be permitted to now seize upon an innocuous footnote in the testimony of witness Schaefer as a predicate for imposing a substantial and unnecessary additional discovery burden upon McGraw-Hill, particularly given the commercial sensitivity of the information sought.

Respectfully submitted,

/s/

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Timothy W. Bergin

Hall, Estill, Hardwick, Gable, Golden & Nelson. P.C.  
1120 20<sup>th</sup> Street, N.W., Suite 700 North Building  
Washington, D.C. 20036-3406  
(202) 973-1224  
[tbergin@hallestill.com](mailto:tbergin@hallestill.com)

Counsel for  
The McGraw-Hill Companies, Inc.