

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 POTENTIAL HEARING DATES

(Issued October 8, 2004)

Based on the responses to a request for expressions of interest in oral cross-examination of rebuttal witnesses, no firm conclusion about the need to schedule formal appearances has been reached at this point.¹ Accordingly, I am taking the following steps with respect to further scheduling.

First, participants who have indicated a need to review outstanding responses prior to making a determination about the need for oral cross-examination are directed to contact respective counsel informally as soon as possible after making their determination. Requests for oral cross-examination must be filed within three days of witnesses' responses to discovery.

Second, in the event hearings are needed, two dates are reserved for formal appearances: October 21, 2004 at 1:30 p.m. for oral cross-examination of witness Schaefer on behalf of The McGraw Hill Companies, Inc. and October 26, 2004 at 9:30 a.m. for oral cross-examination of other witnesses. These dates reflect Statements filed by participants in response to P.O. Ruling No. C2004-1/9.²

¹ See Presiding Officer's Ruling No. C2004-1/8, issued September 15, 2004; Statement of the United States Postal Service Regarding Oral Cross-Examination; Statement of Time Warner Inc. et al. Regarding Anticipated Oral Cross-Examination; Statement of McGraw-Hill Regarding Oral Cross-Examination; and Magazine Publishers Association of America, Inc. Notice Concerning Oral Cross-Examination, all filed October 7, 2004.

² See, for example, Statement of Availability of McGraw-Hill Witness Schaefer, September 23, 2004.

Third, Commission rule 30(e)(2) provides that designations of responses to written cross-examination are due three working days before a witness's scheduled appearance. That standard will also apply in the event formal appearances are not needed. Thus, designations of written cross-examination responses of witness Schaefer are due October 18, 2004. Designations of the responses of witnesses Armstrong, Bradfield, Cavnar, Crews, Heath, McGarvy, and Miller are due October 21, 2004. Designations of written responses to institutional interrogatories are also due October 21, 2004.

Fourth, if witnesses do not make formal appearances, I anticipate authorizing all testimony and related material to be filed by motion and declaration or attestation. This practice has been used successfully in the past, and would appear to be suitable in this case. A further ruling addressing this point will be forthcoming.

Fifth, the Statement of American Business Media Regarding Oral Cross-Examination, filed October 8, 2004, was accompanied by a contemporaneous Motion for Leave to File Statement of American Business Media Regarding Oral Cross-Examination One Day Late. This motion is granted.

RULING

1. Subject to the developments referred to in the body of this ruling, a hearing for receipt of the testimony and designated cross-examination of McGraw-Hill witness Schaeffer, along with related cross-examination, is set for October 21, 2004 at 1:30 p.m.
2. Subject to the developments referred to in the body of this ruling, a hearing for receipt of the testimony and designated cross-examination of other rebuttal witnesses, along with related cross-examination, is set for October 26, 2004 at 9:30 a.m.

3. Participants are directed:
 - (a) to consult informally among themselves regarding the need for oral cross-examination on outstanding interrogatory responses; and
 - (b) to contact respective counsel as soon as cross-examination intentions are known.

4. The standard set out in Commission rule 30(e)(2) with respect to the deadline for filing designations of written cross-examination will also apply in the event that witnesses do not make formal appearances.

5. Designations of written cross-examination for
 - (a) witness Schaefer are due October 18, 2004;
 - (b) witnesses referenced in the body of this ruling are due October 21, 2004; and
 - (c) institutional responses are due October 21, 2004.

6. The Motion for Leave to File Statement of American Business Media Regarding Oral Cross-Examination One Day Late, filed October 8, 2004, is granted.

George Omas
Presiding Officer