

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 MOTION SEEKING  
PROTECTIVE CONDITIONS FOR CERTAIN LIBRARY REFERENCES  
RELATED TO TESTIMONY OF TIME WARNER ET AL. WITNESS STRALBERG

(Issued November 10, 2004)

Time Warner Inc. et al.<sup>1</sup> seek application of protective conditions to three library references associated with the surrebuttal testimony of TW et al. witness Stralberg (TW et al. LR-8, TW et al. LR-9; and TW et al. LR-10). Motion of Time Warner Inc. et al. for Protective Conditions (Motion), November 10, 2004. The library references include publishers' data provided by American Business Media (ABM) and related material, such as an Access database created by witness Stralberg and an Excel spreadsheet.

Complainants describe the circumstances leading up to this request, and note that a Non-disclosure Agreement they entered into with ABM provides that the referenced library references cannot be filed absent a Commission order granting appropriate protective conditions. Motion at 1-2. They ask that such conditions specifically provide that (1) access to the files be restricted to Commission staff and to participants in this docket who have a demonstrable legitimate interest in examining them; and (2) that any participant seeking access to the files be required to file notice of its request in sufficient time to allow counsel for ABM an opportunity to interpose an objection prior to any disposition of the request. Id. at 2. The proposed conditions

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<sup>1</sup> Consisting 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., and collectively referred to as Time Warner Inc. et al. or Complainants.

suggest three days advance notice (prior to signing the certification at the docket section), with a copy of the notice served in advance on ABM.

Complainants further state that ABM does not object to the Complainants' Motion and concurs in the request regarding the specific nature of the protective conditions appropriate for the underlying library references.

Based on the circumstances surrounding the preparation of the library references identified in the Motion and ABM's agreement to certain specific terms in the protective conditions, the Motion is granted. Participants seeking to gain access to the protected material are directed to follow the procedures regarding notice set out in Paragraph No. 16 of the attached set of protective conditions. These conditions are identical to those included in the Motion.

#### RULING

1. The Motion of Time Warner Inc. et al. for Protective Conditions, filed November 10, 2004, is granted.
2. The attached set of protective conditions shall apply to participants seeking access to the library references identified in the body of this ruling.

George Omas  
Presiding Officer

## STATEMENT OF COMPLIANCE WITH PROTECTIVE CONDITIONS

The following protective conditions limit access to materials filed in Docket No. C2004-1 by Time Warner Inc. et al. as library references TW et al. LR-8, TW et al. LR-9 and TW et al. LR-10 (hereinafter, "these materials"). These materials consist of: a CD with mail.dat files provided to Time Warner Inc. et al. by American Business Media (ABM) in connection with ABM's response to TW et al./ABM-4(b) (filed August 31, 2004) (TW et al. LR-8); Access databases created from those files by Time Warner Inc. et al. witness Halstein Stralberg (TW et al.-RT-2) (TW et al. LR-9); and an Excel spreadsheet containing the detailed results of witness Stralberg's analysis of those files (TW et al. LR-10).

These use of these materials by Time Warner Inc. et al. is governed by the terms of the "Nondisclosure Agreement" between Time Warner Inc. et al. and ABM (copy appended hereto) (executed August 26, 2004).

Individuals seeking to obtain access to these materials must agree to comply with these conditions, complete the attached certifications, provide the completed certifications to the Commission, and serve them upon counsel for ABM.

1. Only a person who is either:
  - (a) an employee of the Postal Rate Commission (including the Office of the Consumer Advocate) with a need-to-know; or
  - (b) a participant in Postal Rate Commission Docket No. C2004-1, or a person employed by such participant, or acting as agent, consultant, contractor, affiliated person, or other representative of such participant who has a demonstrable need for access to these materials for purposes related to the litigation of Docket No. C2004- 1, shall be granted access to these materials. However, no person involved in competitive decision-making for any entity that might gain competitive advantage from use of this information shall be granted access to these materials. "Involved in competitive decision-making" includes consulting on marketing or advertising strategies, pricing, product research and development, product design, or the competitive structuring and composition of bids, offers or proposals. It does not include rendering legal advice or performing other services that are not directly in furtherance of activities in competition with a person or entity having a proprietary interest in the protected material.

2. No person granted access to these materials is permitted to disseminate them in whole or in part to any person not authorized to obtain access under these conditions.
3. The final date of any participant's access shall be the earlier of:
  - (a) the date on which the Postal Rate Commission issues a recommended decision or otherwise closes Docket No. C2004-1;
  - (b) the date on which that participant formally withdraws from Docket No. C2004-1; or
  - (c) the last date on which the person who obtains access is under contract or retained or otherwise affiliated with the Docket No. C2004-1 participant on whose behalf that person obtains access. The participant immediately shall notify the Postal Rate Commission and counsel for ABM of the termination of any such business or consulting arrangement or retainer or affiliation that occurs before the closing of the evidentiary record.
4. Immediately after the Commission issues a recommended decision in, or otherwise disposes of, Docket No. C2004-1, a participant (and any person working on behalf of that participant) who has obtained a copy of these materials shall certify to the Commission:
  - (a) that the copy was maintained in accordance with these conditions (or others established by the Commission); and
  - (b) that the copy (and any duplicates) either have been destroyed or returned to the Commission.
5. The duties of any persons obtaining access to these materials shall apply to material disclosed or duplicated in writing, orally, electronically, or otherwise, by any means, format, or medium. These duties shall apply to the disclosure of excerpts from or parts of the document, as well as to the entire document.
6. All persons who obtain access to these materials are required to protect the document by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized disclosure of the document as those persons, in the ordinary course of business, would be expected to use to protect their own proprietary material or trade secrets

and other internal, confidential, commercially sensitive, and privileged information.

7. These conditions shall apply to any revised, amended, or supplemental versions of materials provided in Docket No. C2004-1.
8. The duty of nondisclosure of anyone obtaining access to these materials is continuing, terminable only by specific order of the Commission, or as specified in paragraphs 10 through 15, below.
9. Any Docket No. C2004-1 participant or other person seeking access to these materials by requesting access, consents to these or such other conditions as the Commission may approve.
10. Time Warner Inc. et al. shall clearly mark the following legend on each page, or portion thereof, that the Service seeks to protect under this agreement: 'Confidential-Subject To Protective Conditions In Docket No. C2004-1 Before The Postal Rate Commission' or other markings that are reasonably calculated to alert custodians of the material to its confidential or proprietary nature. Except with the prior written consent of ABM, or as hereinafter provided, no protected information may be disclosed to any person.
11. Any written materials — including but not limited to discovery requests and responses, requests for admission and responses, deposition transcripts and exhibits, pleadings, motions, affidavits, written testimony and briefs — that quote or contain materials protected under these protective conditions are also covered by the same protective conditions and certification requirements, and shall be filed with the Commission only under seal. Documents submitted to the Commission as confidential shall remain sealed while in the Secretary's office or such other place as the Commission may designate so long as they retain their status as stamped confidential documents.
12. Any oral testimony, argument or other statements that quote or otherwise disclose materials protected under these protective conditions shall be received only in hearing sessions limited to Postal Service representatives and other persons who have complied with the terms of the protective order and have signed the attached certifications. The transcript pages containing such protected testimony shall be filed under seal and treated as protected materials under paragraph 11.

13. Notwithstanding the foregoing, protected material covered by paragraphs 11 or 12 may be disclosed to the following persons without their execution of a compliance certificate. Such disclosure shall not exceed the extent necessary to assist in prosecuting this proceeding or any appeals or reconsideration thereof.
  - (a) Members of the Commission.
  - (b) Court reporters, stenographers, or persons operating audio or video recording equipment for such court reporters or stenographers at hearings or depositions.
  - (c) Any other person designated by the Commission in the interest of justice, upon such terms as the Commission may deem proper.
  - (d) Reviewing courts and their staffs. Any person seeking to disclose protected information to a reviewing court shall make a good faith effort to obtain protective conditions at least as effective as those set forth in this document. Moreover, the protective conditions set forth herein shall remain in effect throughout any subsequent review unless overridden by the action of a reviewing court.
14. A participant may apply to the Commission for a ruling that documents, categories of documents, or deposition transcripts, stamped or designated as confidential, are not entitled to such status and protection. ABM or other person that designated the document or testimony as confidential shall be given notice of the application and an opportunity to respond. To revoke confidential status, the proponent of declassification must show by a preponderance of the evidence that public disclosure of the materials is consistent with the standards of the Freedom of Information Act, 5 U.S.C. § 552(b)(1)-(9), and Commission precedent.
15. Subpoena by Courts or Other Agencies. If a court or other administrative agency subpoenas or orders production of confidential information which a participant has obtained under the terms of this protective order, the target of the subpoena or order shall promptly (within two business days) notify ABM (or other person who designated the document as confidential) of the pendency of the subpoena or order to allow the designating party time to object to that production or seek a protective order.

16. Each person desiring to obtain access to these materials must file a notice with the Postal Rate Commission listing name, title and position at least three days in advance of the day that the person signs a certification at the Commission's docket section in order to receive a copy of the materials. A copy of the notice must also be served in advance on ABM.

### CERTIFICATION

The undersigned represents that:

Access to materials filed in Docket No. C2004-1 by Time Warner Inc. et al. as library references TW et al. LR-8, TW et al. LR-9 and/or TW et al. LR-10 (hereinafter, "these materials" or "the information") has been authorized by the Commission. The cover or label of the copy obtained is marked with my name. I agree to use the information only for purposes of analyzing matters at issue in Docket No. C2004-1. I certify that I have read and understand the above protective conditions and am eligible to receive access to materials under paragraph 1 of the protective conditions. I further agree to comply with all protective conditions and will maintain in strict confidence these materials in accordance with all of the protective conditions set out above.

Name \_\_\_\_\_

Firm \_\_\_\_\_

Title \_\_\_\_\_

Representing \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

CERTIFICATION UPON RETURN OF  
PROTECTED MATERIALS

Pursuant to the Certification which I previously filed with the Commission regarding materials filed in Docket No. C2004-1 by Time Warner Inc. et al. as library references TW et al. LR-8, TW et al. LR-9 and/or TW et al. LR-10 (hereinafter, "these materials" or "the information"), received on behalf of myself and/or the party which I represent (as indicated below), I now affirm as follows:

1. I have remained eligible to receive access to materials under paragraph 1 of the protective conditions throughout the period these materials have been in my possession. Further, I have complied with all conditions, and have maintained these materials in strict confidence in accordance with all of the protective conditions set out above.
2. I have used the information only for purposes of analyzing matters at issue in Docket No. C2004-1.
3. I have returned the information to the Postal Rate Commission.
4. I have either surrendered to the Postal Rate Commission or destroyed all copies of the information that I obtained or that have been made from that information.

Name \_\_\_\_\_

Firm \_\_\_\_\_

Title \_\_\_\_\_

Representing \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_