

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

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

POSTAL RATE AND FEE CHANGES, 2001

Docket No. R2001-1

OPPOSITION OF AMERICAN BUSINESS MEDIA
AND THE MCGRAW-HILL COMPANIES, INC.
TO DESIGNATIONS OF WRITTEN CROSS-EXAMINATION OF
WITNESS TAUFIQUE BY MAGAZINE PUBLISHERS OF AMERICA
(JANUARY 7, 2001)

For the reasons stated below, American Business Media and The McGraw-Hill Companies, Inc. hereby oppose the following designations of written cross-examination of Postal Service witness Taufique submitted on January 3, 2002 by the Magazine Publishers of America and object to their admission into evidence:

ABM-MH/USPS-T34-8, 10 and 15
CRPA-NFIP/USPS-T34-14(c)

We will begin with CRPA-NFIP/USPS-T34-14(c), which on December 7, 2001 asked essentially for documents in the possession of the Postal Service that show that certain printing companies (identified by witness Taufique in a prior response) combine mailings of periodicals with circulations of 50,000 or less. The only document provided in response is a letter dated December 19, 2001 from litigant Magazine Publishers of America that is not responsive to the request, because it does not mention a single one of the printing companies identified in the question. More importantly, the letter amounts to premature testimony on behalf of MPA—testimony that is not subject to fair cross-examination through witness Taufique, who cannot properly sponsor it. To admit this letter into evidence as purported cross-examination of witness Taufique would seriously distort and thereby jeopardize the written cross-examination procedure adopted by the Commission.

The Commission has never strictly enforced the usual requirement that cross-examination must be hostile, not friendly, but here MPA and the Postal Service go too far. A supporter of the Postal Service's claims with regard to palletization, MPA seeks, in cooperation with the Postal Service, to place in the record *as cross-examination of a Postal Service witness* its own views accompanied by undocumented factual assertions in the form of a letter written three months after the Postal Service's case-in-chief was filed and twelve days after service of the interrogatory to which it is allegedly (but is not) responsive. In addition, of course, the letter is pure hearsay, and witness Taufique clearly cannot be cross-examined on the views of MPA's Senior Vice President.

If the Commission allows the Postal Service and MPA to abuse written cross-examination in this fashion, the floodgates will be open to other parties to collude in similar fashion. Thus, for example, if Advo submitted an interrogatory to the Association of Alternate Postal Systems seeking support for a particular statement in its testimony, the Newspaper Association of America could first write a self-serving letter to the Association to use in its response and then designate that response as written cross-examination of the Association's witness, even though the witness could not properly be cross-examined on that material. Surely, if this abuse of process were to be permitted, creative parties could devise similar ways to distort the purpose of written cross-examination to the point where it becomes meaningless and impinges on the due process rights of other parties.

For these reasons, the Commission should not permit the receipt into evidence of CRPA-NFIP/USPS-T34-14(c). If MPA wishes to introduce into evidence the substance of its December 19th letter to the Postal Service, it is free to do so through its own testimony (should the settlement agreement not hold), subject to full and fair cross-examination. But certainly the cross-examination of witness Taufique is not the appropriate time for MPA's opinions to become evidence.

The same fate should befall MPA's designations of ABM-MH/USPS-T34-10 and 15, for the same reasons. Each response refers to and paraphrases the content of the MPA letter that MPA improperly attempts to bootstrap into the record as part of the response discussed above, and they therefore should not be introduced into evidence.


Finally, the response to ABM-MH/USPS-T34-8 should not be admitted into evidence for similar reasons. The request, filed on December 5, 2001, quoted from witness Taufique's testimony to the effect that the proposed Periodicals rate design that increases drop shipping incentives would help mitigate Postal Service cost increases, and asked the Postal Service to provide "all studies *relied upon or other evidence relied on by Mr. Taufique* that quantify the extent to which drop shipping in Periodicals is expected to increase as a result of this proposal." (Emphasis added.) The witness's response is based in part on discussions with unnamed "postal managers, mailers and members of the printing industry," and the bulk of the response consists of six pages of material provided to the Postal Service, according to the first page thereof, *on December 18, 2001* by printer and intervenor R.R. Donnelley. By definition, Mr. Taufique could not in his testimony have relied upon information received thirteen days after the interrogatory was submitted and three months after his testimony was filed. There is no way that Mr. Taufique can defend or explain the methodology underlying this "study" by R.R. Donnelley. Neither that work nor this response should be admitted into evidence as what purports to be cross-examination of witness Taufique.

American Business Media and McGraw-Hill recognize that they could have raised these objections at the time that the written cross-examination is offered into evidence. However, the integrity of the Commission's process carries an importance well beyond these few interrogatory responses. We believe that giving MPA (which was advised of this motion last Friday and is being served today by email) time to formulate a response, and the Commission time to consider

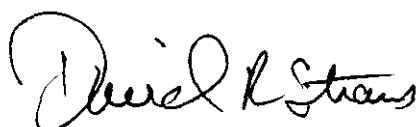
the issue presented here, outside the pressures of the hearing room, will better enable the Commission to reach the right result on the present issues and for the longer term.

For the foregoing reasons, American Business Media and McGraw-Hill object to the admission into evidence as written cross-examination the interrogatories and responses identified above.

Counsel for the Coalition of Religious Press Associations and the National Federation of Independent Publishers has authorized the undersigned to state that these parties intend to withdraw their designation of CRPA-NFIP/USPS-T34-14(c) at the hearing and that they support these objections.


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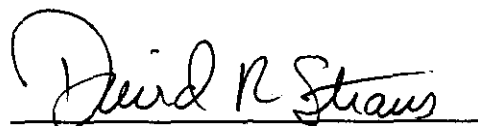
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CERTIFICATE OF SERVICE

I hereby certify that I have this date served this document in accordance with Section 12 of the Commission's Rules of Practice.



David R. Straus

Dated: January 7, 2002