

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

**Experimental Periodicals
Co-Palletization Dropship
Discounts For High Editorial
Publications**

) **Docket No. MC2004-1**

**REQUEST FOR DEFERRED HEARING IN RESPONSE TO
ORDER NO. 1392 OF AMERICAN BUSINESS MEDIA
(March 22, 2004)**

Pursuant to the Commission's Rules of Practice and Order Nos. 1392 and 1395, issued February 27 and March 11, 2004, American Business Media requests that, if the Postal Service proposal is not summarily dismissed, it be set for hearing, but with such hearing deferred pending discovery and settlement talks.¹

¹ American Business Media does not at this time oppose the Postal Service's request for waiver of the filing requirements set forth in Sections 54 and 64 of the Commission's rules, without prejudice to American Business Media's rights to obtain additional information through discovery, and (3) does not oppose the Postal Service's request to proceed under the Commission's rules for experimental services, Rules 67-67d. American Business Media supports the unrelated request in this docket for modification to DMCS Section 511 to allow for sample copies of periodicals to be emailed with most parcels.

General Statement

The Commission should understand at the outset that what appears to be a proposal of little or no consequence, given the Postal Service's very modest (but as we will show, overstated) estimate of the number of Periodical pieces that will actually take advantage of the proposed high-edit co-palletization rate, has ramifications that go well beyond the confines of this case. For as long as American Business Media and its predecessor organizations have been involved in postal rate matters—and that involvement began decades before the Postal Reorganization Act—it has steadfastly supported the flat editorial pound rate and opposed Postal Service (or intervenor) efforts to create distance-based differentials. Each time an end to the editorial flat rate was proposed, the Commission rejected the change and reaffirmed the validity of the concept that the rate for editorial matter should be the same no matter where that material is mailed to or from. This principle has been a bedrock of postal rates from the birth of a national postal system.

The most recent frontal attack on the unzoned editorial pound rate was made by the Postal Service and supported by some Periodicals mailers in Docket No. R90-1. The Commission (Opinion and recommended Decision, paragraphs 5268-83) there again rejected that challenge, and its order was affirmed on this point by the United States Court of Appeals for the District of

Columbia Circuit in *Mail Order Ass'n of America v. United States Postal Service*, 2 F. 3d 408 (1993).²

There is no need at this stage to re-argue the merits of this issue, for an unzoned editorial rate is “the law of the case.” Time and again the zoning of the pound rate for editorial matter has been squarely and soundly rejected by this Commission. Yet, without so much as a wave of the hand to this established policy, the Postal Service seeks a new rate that would for the first time charge a lower rate for editorial matter travelling a short distance than for editorial matter travelling a longer distance. Even though the Postal Service may seek now to do so in the very limited context of a case in which, *if* its claims are valid, everyone wins, this assumed fact is certainly not presented as, nor can the Commission consider it to be, a valid reason to depart from longstanding policy.³

In seeking a change in that longstanding policy, not only must the Postal Service acknowledge that it is doing so—which it has not done here—but it must present compelling reasons for that departure, which it has not done either. Rather, the Postal Service is ignoring the policy it wishes to terminate and has presented what appears to be an ill-conceived attempt to sneak a zoned editorial rate through the Commission’s back door *without presenting a single reason, much less compelling reasons, for the Commission to depart from its editorial rate policy.*

² Later, in Docket No. MC95-1, the Commission again rejected a proposal for the zoning of the editorial rate as part of a proposed reclassification of Periodicals mail, but that reclassification was rejected largely on other grounds.

³ A regulatory commission is of course free to depart from previously established principles and policy, but only when it articulates good reason for doing so. See, *E.G., City of Fort Morgan v. FERC*, 181 F. 3d 1155, 1163 & n. 13 (10th Cir. 1999) (when an agency departs from its

In theory, it might be possible that the Postal Service could submit a request that is so well-documented and supported that it could be deemed to present sufficient grounds for overturning Commission policy without expressly confronting that policy. Such is certainly not the case here. Instead, we are presented with a proposal that, resolving all issues and questions in the Postal Service's favor, would lead to modestly lower postage charges for a handful of unidentified publications⁴, with net savings to those publications that are not even estimated by Mr. Taufique and insignificant benefits to the Postal Service and other mailers. A change in policy cannot rest on so slender a reed. It would be appropriate, therefore, for the Postal Rate Commission to dismiss the request and terminate the docket.

Request for Hearing

Should the Commission determine that dismissal is not appropriate, then, American Business Media submits, this case should be set for hearing so that an adequate record can be developed. It is possible that some issues can resolved with a "paper" hearing and without the need for testimony and an evidentiary hearing. But it is also possible that other issues, such as the extent to which the proposed postage savings with the 30% passthrough will exceed the costs to the

established precedent without a reasoned explanation, its decision will be vacated as arbitrary and capricious).

⁴ Witness Taufique claims that 20 million pieces per year "would be able to take advantage" of the proposal, although, since Mr. Taufique never addresses whether the costs of dropshipping and co-palletizing are less than, equal to or more than the postage savings, we are at a loss to understand the basis of this claim. But even if 20 million pieces "would be able" to benefit from co-palletization, which is doubtful, and even if all those in fact did, if the typical publication doing so was a monthly with a circulation of 50,000, there would be only about thirty-three publications in the program.

publication of dropshipping and co-palletizing, will require the development of a factual record. In light of the paucity of information provided in the filing, it is at this stage impossible to determine whether the development of that factual record will require evidentiary hearings, or whether a factual record can be created—once more information is forthcoming—on the basis of a stipulation.

In the next section, American Business Media will do what it can to comply with the Commission's request that it identify genuine issues of material fact that warrant a hearing. Doing so, however, is rendered problematic by the lack of facts in the filing. At least for now, we are confronted here more by factual gaps than by factual disputes.

Notwithstanding our contention that additional facts must be developed, possibly through an evidentiary hearing, American Business Media is not anxious that there be such a hearing. All of the potential parties to this proceeding can spend their resources more profitably than arguing over a change in rates that will almost certainly have little or no actual impact on anyone. For that reason, although we must ask that this case be set for hearing if it is to proceed, we also ask that the hearing procedures be delayed so that the parties can engage in either formal or informal discovery and settlement talks.

Factual Issues

As stated above, American Business Media does not know whether most of the issues to be identified below represent disputed factual issues or merely factual gaps created by an insubstantial rate and classification request. Until we know the facts on which the Postal Service purports to rely, we cannot know if

there is material disagreement on what the facts are. There are, however, at least three areas in which there appear to be material facts in dispute.

1. Impact and effect of proposal. American Business Media disputes the Postal Service's guess as to the likely use of the proposed discounts. Mr. Taufique explains (at 4) that that typical recipient of the new discount would enjoy an overall postage reduction of 5 cents per piece for co-palletizing and dropshipping, which he calls a "reasonable incentive" to co-palletize. At page 18, he guesses that 20 million pieces per year will take advantage of the discount.

Yet he also states (at 4) that the now one-year-old co-palletization experiment produces a discount of 10 cents per piece, or twice as great an incentive. According to the report filed in Docket No. MC2002-3 in November, to which Mr. Taufique refers at page 2, about 9 million pieces shifted to pallets under the existing experiment during accounting periods 9-13 and the "14th" (or transitional) accounting period.⁵ Annualizing that amount produces a one-year total of about 21 million pieces.

It is simply not credible that nearly as many pieces would be affected by the new proposal as the existing one. First, and most importantly, even though one would search in vain in the Postal Service filing for any information about the cost to the mailer of dropshipping and paying the printer to co-palletize, it is American Business Media's understanding that those now co-palletizing under the existing experiment see an actual savings, after taking into account the

⁵ It should be noted that the Postal Service has not actually revealed the "shift," since there were some periodicals that co-palletized prior to the experiment and are included in the total.

postage reduction and increased costs, of less than 1 cent per copy, and in many cases much less.⁶ Under these circumstances, if the “incentive” were reduced from 10 cents to 5 cents per piece, as Mr. Taufique says is proposed here, it is likely that the 21 million pieces would fall to zero. However, Mr. Taufique predicts with no support that 20 million pieces will be enticed by combination of discounts totalling, he says, 5 cents to dropship and co-palletize.⁷

What’s more, the claimed 5 cent reduction is really about 4.5 cents. It is surprising that in an arena where fractions of a cent matter, Mr. Taufique has chosen to engage in a rounding exercise that overstates the effective savings by 10%. See Exhibit A, page 5 where the postage under present rates for the example 100% editorial publication is shown to be 36 cents. In fact, dividing the total postage of \$23,372 by 65,000 produces an average postage of 35.95 cents. The bulk of problem is caused by the rounding of the postage under the proposal, shown on exhibit A, page 6. Dividing the total postage of \$20,415 by 65,000 produces average postage of 31.41 cents. The difference is 4.54 cents, not 5 cents.

Looking at this issue from another direction, American Business Media notes that the discount would apply to pallets weighing at least 250 pounds. In order to estimate the average weight of a pallet to which the discounts might actually be applied, we examined the MC2002-3 report to determine the average

⁶ One such member realizes a saving of 1 percent of the “before” postage, or about 3/10ths of a cent per piece.

⁷ His conclusion is all the more tenuous in light of the far smaller universe of publications with at least 85% editorial content and weighing at least nine ounces. The average weight of publications in the current co-palletization program, according to the Postal Service filing in Docket No. MC2002-3, is 6.5 ounces. The minimum here is 9 ounces.

weight of pallets enjoying the existing experimental discounts. That exercise proved fruitless—and pointed to likely data problems—since dividing the 3,659,082 pounds in the “total” column for “pallets after co-palletization” by 19,647 pallets produces an average weight of 186 pounds. (Pre-copalletization pallets allegedly averaged 462 pounds.)

Rejecting the paradoxical average weight of 186 pounds when the *minimum* is 250 pounds, we will assume an average weight of 400 pounds. Assuming that the pallet contains the 100% editorial, 9 ounce pieces used in Mr. Taufique’s example (at 4), this pallet would contain 711 pieces, each realizing a 4.5 cent reduction in postage, or a total reduction of \$31.99.⁸ Based on experience under the present program, American Business Media believes that the publisher would pay more than this to the printer for co-palletizing and to a shipper for dropshipping this pallet. American Business Media does not have the burden of proof. The Postal Service does, and it has not provided any data whatsoever to support the assertion that the proposed 5 cent discount, which is really a 4.5 cent discount, is any incentive at all. The available public data American Business Media used as an example indicate that there would not be any incentive. If there is no savings incentive, then where is the justification for overturning the principle of a flat editorial pound rate?

2. The 30% pass through. American Business Media submits that the Postal Service has not supported the proposed 30% passthrough of the alleged savings and that its inadequate reasons reveal serious defects in the proposal.

⁸ If we used 186 pounds, the pallet would contain 331 pieces and “save” \$14.90 in postage.

Mr. Taufique explains (at 5-6) that the 30% passthrough is “conservative,” is designed to assure that there is no “erosion,” will be applied to an editorial pound rate that is already low, and is sufficient to provide the necessary incentive. We have already shown that there is no support for the claim that there is an incentive and that all available data indicate otherwise. As for the prevention of erosion, that is a laudable goal, but we submit that any concern that there could possibly be erosion with a passthrough markedly higher than 30% reveals not conservatism but lack of confidence in the proposal itself and the underlying data.⁹

Indeed, Mr. Taufique’s concern with applying a larger discount to an already low editorial pound rate is telling. What it tells us is that the editorial zoning proposed in this docket makes no sense. In a classic understatement (at 16), Mr. Taufique explains that using a 100% passthrough would apply discounts that are inappropriately high relative to the base rate. Indeed. Mr. Taufique’s proposed discount chart (at page 13) representing the 30% passthrough if grossed up to the 90% level (to allow for modest forecasting error) would contain the following per pound discounts for ADC entry:

Zones 1&2	\$.024
Zone 3	\$.039
Zone 4	\$.084
Zone 5	\$.15
Zone 6	\$.219
Zone 7	\$.303
Zone 8	\$.375

⁹ American Business Media is not arguing for a higher passthrough. We are demonstrating that the apparent need to keep the pass through so low demonstrates that the entire approach to the proposal is defective.

Thus, at a 90% passthrough, the net result would be a *negative* pound rate for zones 6-9. Additionally, Mr. Taufique's typical high editorial publication that is now paying 36 cents per piece would pay on average 25.7 cents per piece if the passthrough were 90%, and zone 7 and 8 copies would pay no postage at all. Mr. Taufique understandably does not like these result, so he has scaled back the passthrough to 30%. Perhaps he should have reexamined the notion of reducing a pound rate that does not include transportation costs in order to reflect savings in transportation costs.

3. The Restrictions

Except for the circular reasoning at page 7 of his testimony, Mr. Taufique presents no support for limiting the experiment to publications with no more than 75,000 circulation and no more than 15% advertising. The overriding requirement that, to qualify, the pieces must not be of sufficient density to create a pallet ought to be self-policing with respect to circulation size. Moreover, since publications do not mail precisely the same number of copies from month to month, it is possible that a publication with very close to 75,000 circulation could bounce in and out of a copallet program. The same thing could happen under this proposal for a publication that has 14.8% advertising one month and 15.2% advertising the next. American Business Media is not proposing modifications to the proposal to eliminate these requirements. We are suggesting that these apparent flaws demonstrate that the proposal was not well designed or thought out. These flaws and others, including the level of "incentive," give rise to a concern this proposal has been designed to create deviation from the flat

editorial pound rate and not to cause any significant shift from sacks to pallets. The fact that only \$975 of the \$2,957 postage reduction shown on Exhibit A, pages 5 and 6, or 33%, results from palletization reinforces the notion that this is primarily an editorial drop ship discount, not a palletization discount.

Conclusion

As shown above, there appear to be both serious data gaps in the Postal Service proposal and significant factual assertions that are totally unsupported and apparently wrong. For this reason, the Commission's choices appear to be either dismissing the request or setting the matter for hearing. If it chooses the latter approach, American Business Media requests that it defer both the commencement of formal hearing procedures and the 150-day time limit in Rule 67d by 90 days in order to provide for discovery and settlement talks. The Postal Service has not suggested that there is a need for expedition in this matter. In fact, at this point it appears that one printer would like to try co-palletizing a

handful of eligible publications, but no publisher has yet gone on record as seeking to have its high editorial publications copalletized.

Respectfully submitted,

/s/ David R. Straus
David R. Straus
Attorney for American Business Media

Law Offices of:

Thompson Coburn LLP
1909 K Street, NW
Suite 600
Washington, DC 20006-1167
(202) 585-6921

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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of March, 2004, a copy of the foregoing document was served in accordance with Section 12 of the Commission's Rules of Practice.

/s/ David R. Straus
David R. Straus
Attorney for American Business Media

Law Offices of:

Thompson Coburn LLP
1909 K Street, NW
Suite 600
Washington, DC 20006-1167
(202) 585-6921