

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

COMMENTS OF NATIONAL NEWSPAPER ASSOCIATION (NNA)  
ON POR RULING NUMBER C2004-1/2

June 25, 2004

Pursuant to the Presiding Officer's request for comment on scheduling matters at the beginning of the June 29 hearing for cross-examination of two complainant's witnesses in this case, NNA respectfully submits these comments in writing. Because counsel had relied upon the Commission's earlier suggestions that cross-examination would occur in July, irreconcilable conflicts with the June 29 and 30 hearing dates prevent a personal appearance on June 29.

NNA appreciates the Presiding Officer's willingness to consider favorably the motion of American Business Media by resetting two of the four witnesses' cross-examination dates. NNA has submitted no interrogatories to witness Schick, and had not at the time of POR 1/3's issuance decided to participate in oral cross-examination of witness Stralberg. However, NNA wishes to note that as of this date, responses to its written cross-examination of witness Stralberg have not been received, and that designations of responses received after this date likely must be filed following the witness's appearance. With all respect for the Commission's desire to proceed expeditiously with consideration of this complaint, NNA wishes to note that expediency, in this case, may have already hampered development of a record to some degree, as NNA would be unable to participate in oral cross-examination of this witness regardless of the witness's written responses. It is exceedingly difficult for small parties like NNA, lacking

a stable of postal attorneys, to respond to the Commission's expectations in cases that operate on such a fast track, although NNA always makes its best effort. The Commission may notice that fewer and fewer small mailing organizations appear before it in these highly complex and costly litigations, a fact that inevitably deprives the record of a fulsomeness that would aid in its decisions. NNA is presumably not alone in its concern that the pace of work before the Commission makes it sometimes impossible to participate fully.

Therefore, NNA joins ABM in its concern for the schedule ahead. Several considerations affect NNA's belief that a summer deadline for intervenors' testimony will adversely affect a fair consideration of this docket.

First, summer is a difficult time, at best, for parties to arrange schedules and procure the services of economic consultants and mailer-witnesses, who most generally have their own companies to run even while attempting to aid their organizations by providing expertise to the Commission.

Second, the difficulty in this case may be underscored by the realities of expertise among the field of knowledgeable economic consultants, many of whom represent parties (or related trade organizations) to the complaint itself, and are therefore unavailable to intervenors.

Third, the Commission may take notice that during this same season, many of the parties—including NNA—are actively involved in matters pending in Congress that will affect the future of every mailer that generally appears before this Commission, as well as the Commission itself. While complainants, representing very large companies, may find themselves with sufficient expertise on hand to simultaneously be represented in both venues, NNA and others whose interests are at stake in this docket do not.

Finally, NNA intends to submit intervenor's testimony in this case. It is engaged in work with the Postal Service that has been ongoing for several years, and is now intensified as a result of the Postal Service's desire to improve operational efficiencies for newspaper handling. Some developments flowing from this work may become relevant to this complaint and might assist the Commission in a fair evaluation of the record developed by all parties. If NNA's testimony is required before Labor Day, it is highly unlikely that meaningful information will be available for the Commission's consideration.

NNA has already joined ABM in requesting a deadline after Labor Day for intervenors' testimony. If counsel were to appear in person on June 29, NNA would reiterate the validity of ABM's and NNA's concerns. The stakes involved in this case are indeed grave for all periodicals mailers, including NNA's. If the Commission wishes to consider its decision on a fully-developed record, NNA urges it to recognize the disabilities a summer filing schedule would impose upon the smaller mailers represented by NNA and ABM.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have filed the foregoing document online in accordance with the Commission's Rules of Practice.

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June 25, 2004  
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