

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 MATTERS RELATED  
TO BRIEFING SCHEDULE AND EVIDENTIARY RECORD

(Issued December 20, 2004)

This ruling addresses Notice of Inquiry No. 1 Concerning Periodicals Data, November 19, 2004 (NOI No. 1) and related submissions in terms of two issues: their admission into the evidentiary record and their impact on the briefing schedule.

*Admission of NOI No.1 and related material into the record.* Recent rulings have addressed certain matters related to responses and commentary on NOI No.1, including that of Time Warner Inc. et al. witness Stralberg.<sup>1</sup> Participants were given an opportunity to oppose inclusion of the Stralberg commentary in the evidentiary record. No oppositions have been received; therefore, this material, identified as Comments of Time Warner Inc. et al. Witness Halstein Stralberg on the Characteristics of Very Small Periodicals, In Response to Notice Of Inquiry No. 1, December 8, 2004, will be entered into the evidentiary record of this proceeding upon the filing of two hard copies of the document and witness Stralberg's declaration attesting to the truth and accuracy of this submission.

Other NOI No. 1-related submissions include Response of United States Postal Service Witness Tang to Notice of Inquiry No. 1 Concerning Periodicals Data, December 1, 2004 (Response of USPS Witness Tang); Response of National

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<sup>1</sup> See P.O. Ruling No. C2004-1/22, captioned "Presiding Officer's Ruling Revising Procedural Schedule," issued December 9, 2004, and P.O. Ruling No. C2004-/23, captioned "Presiding Officer's Ruling Addressing Response of Time Warner Inc. et al to Notice of Inquiry No. 1," issued December 10, 2004.

Newspaper Association to Notice of Inquiry No. 1 Concerning Periodicals Data, December 1, 2004 (NNA Response); Statement of United States Postal Service Witness Tang on Time Warner Inc. Et Al.'s Response to Notice of Inquiry No. 1 Concerning Periodicals Data, December 17, 2004 (Further Response of USPS Witness Tang); and Responses of Time Warner Inc. Et Al. Witness Stralberg to ABM/TW Et Al. - 1-8, December 8, 2004 (Stralberg Responses).

*NNA Response.* The NNA Response is an institutional response, with citation to sources of the information provided therein. This information is drawn primarily, but not exclusively, from surveys conducted for NNA and from data in NNA files. Given the institutional nature of the response, I will not require the submission of accompanying declarations, unless there is formal opposition to this treatment. Statements of Opposition are due December 22, 2004. In the event an objection is filed, the Commission will take the conditional status of the NNA Response into consideration in reviewing participants' arguments on brief.

The NNA Response will be conditionally entered into the record upon filing of two hard copies of the document with the Commission's Docket Section, pending resolution of any formal opposition.

*Other material.* NOI No. 1, Response of USPS Witness Tang, Further Response of USPS Witness Tang, and Stralberg Responses will also be admitted into the evidentiary record upon filing with the Commission's Docket Section of two hard copies of each document and, where applicable, declarations attesting to the truth and accuracy of statements contained therein. The Postal Service is directed to file referenced material associated with witness Tang, and Time Warner Inc. et al. is directed to file the referenced material associated with the witness Stralberg.

*Deadline.* The deadline for submitting the material referred to above, with the exception of Statements of Opposition, is December 28, 2004.

*Briefing schedule.* The deadline for initial briefs is December 23, 2004, and January 10, 2005 for reply briefs. Although no formal request for an extension has been received, I have considered whether revision is nevertheless warranted, given certain developments related to NOI No.1. The main question is whether participants' due process rights are compromised by a lack of time to review recent filings related to NOI No. 1. I have concluded that due process has not been impaired. While the recent filings address a significant aspect of this case, the issue itself is limited in terms of the overall thrust of the case. Thus, although the time available to review the commentary is less than ideal, it appears that participants nevertheless will have sufficient time to evaluate this material. Thus, the briefing schedule will not be extended. Deadlines remain December 23, 2004 for initial briefs and January 10, 2004 for reply briefs.

*Other matters.* A ruling closing the record will be issued shortly.

## RULING

1. The Postal Service is directed to file with the Commission's Docket Section two hard copies of the following material, along with related declarations:
  - a. Response of United States Postal Service Witness Tang to Notice of Inquiry No. 1 Concerning Periodicals Data, December 1, 2004 (Response of USPS Witness Tang; and
  - b. Statement of United States Postal Service Witness Tang on Time Warner Inc. Et Al.'s Response to Notice of Inquiry No. 1 Concerning Periodicals Data, December 17, 2004.

2. Time Warner Inc. et al. is directed to file with the Commission's Docket Section two hard copies of the following material, along with related declarations:
  - a. Comments of Time Warner Inc. et al. Witness Halstein Stralberg on the Characteristics of Very Small Periodicals, In Response to Notice Of Inquiry No. 1, December 8, 2004; and
  - b. Responses of Time Warner Inc. Et Al. Witness Stralberg to ABM/TW Et Al. -1-8, December 8, 2004.
3. Materials entered into the record by this ruling shall be collected in a separate volume of transcript. Notice of Inquiry No. 1 shall be included in that volume for reference.
4. The material referred to in Paragraph Nos. 1 and 2 this ruling will be entered into the evidentiary record upon filing with the Commission's Docket Section.
5. The National Newspaper Association is directed to file with the Commission's Docket Section two hard copies of Response of National Newspaper Association to Notice of Inquiry No. 1 Concerning Periodicals Data, December 1, 2004.
6. Statements of Opposition to the treatment accorded the Response of National Newspaper Association to Notice of Inquiry No. 1 Concerning Periodicals Data, December 1, 2004, with respect to excusing accompanying declarations, are due December 22, 2004.
7. The material referred to in Paragraph No. 5 of this ruling will be conditionally entered into the record upon filing with the Commission's Docket Section, pending resolution of any formal opposition to its admission stemming from filings authorized under Paragraph No. 6 of this ruling.

8. The deadline for submitting the material referred to in Paragraph Nos. 1, 2 and 5 of this ruling is December 28, 2004.
  
9. Briefing deadlines established in P.O. Ruling No. C2004-1/22, consisting of December 23, 2004 for initial briefs and January 10, 2005 for reply briefs, remain in effect.

George Omas  
Presiding Officer