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

COMPLAINT OF TIME WARNER INC. et al.
CONCERNING PERIODICALS RATES

Docket No. C2004-1

JOINT INITIAL BRIEF OF AMERICAN BUSINESS MEDIA AND THE McGRAW-HILL COMPANIES, INC

Timothy W. Bergin
Hall, Estill, Hardwick, Gable
Golden & Nelson, P.C.
1120 20th Street, N.W.
Suite 700 North Building
Washington, D.C. 20036-34006
(202) 973-1224

Attorney for The
McGraw-Hill Companies, Inc.

David R. Straus
Thompson Coburn LLP
1909 K Street, N.W.
Washington, D.C. 20006-1167
(202) 585-6921

Attorney for American Business Media

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JOINT INITIAL BRIEF OF
AMERICAN BUSINESS MEDIA
AND
THE McGRAW-HILL COMPANIES, INC.

American Business Media and The McGraw-Hill Companies, Inc. respectfully submit this joint initial brief in opposition to the proposed rate structure for outside-county Periodicals submitted in this proceeding by Complainants Time Warner Inc. et al.

Preliminary Statement

As shown below, the Complainants have failed to meet their burden of proof, and their proposed rate structure should therefore be rejected. The Complainants have, however, raised legitimate issues concerning the relationship between Postal Service costs and mail preparation that deserve further consideration by the Postal Service. Accordingly, the Commission should encourage the Postal Service to work with Periodicals mailers of all sizes to develop measured changes that, unlike the proposal here, will not impose undue hardship on large segments of the Periodicals class. Just as American Business Media and McGraw-Hill have supported past rate design modifications intended to make postal processing more efficient, they have not and do not contend that no additional rate design modifications are appropriate. They do

contend, on the other hand, that the radical restructuring proposed by the Complainants will, in the words of witness Bradfield (Tr. 6/1701), "provide millions of dollars of rate reductions to those periodicals already paying the lowest rates while imposing much higher postage costs on those unable to participate in the proposed 'race to efficiency.'"

I. OVER-ARCHING REASONS TO REJECT COMPLAINANTS' PROPOSED RATE STRUCTURE

A. Complainants' Basic Premises for Their Proposal Are Plainly Mistaken.

Postal Service witness Tang observes that "one can argue that in the past few years, Periodicals have received the most attention in terms of structural changes designed to improve efficiency, as compared with other classes." Tr. 6/2233. As Tang recognizes, this underscores the "'obvious threshold question'" posed by witness Mitchell: "'what is so wrong with the Periodicals rates as to justify a complaint proceeding…?'" Id., quoting Tr. 3/800. The answer given by witness Mitchell is the anomalous inordinate increase in costs attributed to Periodicals since the late 1980s, leading to postal rate increases for Periodicals well in excess of the rate of inflation. Tr. 3/800, 805-08. This answer has been revealed to be a Trojan horse in the context of this case.

Witness Tang points out that the relevant data for measuring cumulative rate increases consist of actual revenue per piece, not the "constant mark-up index" devised by witness Mitchell. Tr. 6/2236. The revenue-per-piece index for the period since 1994 shows that Periodicals rates in the aggregate have been *below* the rate of inflation. *Id*. *See also* Tr. 6/1928-29 (Schaefer). Witness Tang observes further that "recent rate cases have not simply been across-the-board increases," but have provided some

mailers with "opportunities to avoid postage increases through limited changes in their mail preparation[] practices."[1] Id.

Witness Schaefer highlights the latter point, showing that over the years, even *medium*-circulation magazines have incurred rate increases roughly *double* those of large-circulation magazines and double the rate of inflation, whether viewed from the perspective of a "constant mark-up index" *or* revenue per piece. Tr. 6/1925-30. Without question, therefore, the *brunt* of the inordinate cost increases referred to by witness Mitchell have been borne by the *small*-circulation publications that make up the vast majority of outside-county Periodicals, and account for most of its editorial content (Tr. 6/2233) (Tang).

Moreover, as witness Schaefer testified, it is "hard to believe in this light that, as stated by witness Mitchell, the current rates provide signals that are 'hidden by excessive tempering.'" Tr. 6/1927 (quoting Tr. 3/852). It is clear that large publications like Complainants have benefited from numerous cost-based rate elements introduced over the years that are less availing to smaller publications lacking mail density. *See id.* This point is driven home by witness Bradfield, who shows (Tr. 6/1693) that small supplemental mailings of Complainant' publications have a per piece postage more than double that of the main file mailings of those publications. Since the pieces in the main

[1] Further, large lower-cost publications benefited disproportionately from the Commission's reduction in the mark-up (institutional cost allocation) for Periodicals, which was intended primarily to benefit smaller, higher-cost publications. Thus, it is not Time Warner et al. that are subsidizing smaller publications, but rather other mail classes (which have absorbed the institutional costs shifted from all Periodicals). The Commission could arguably justify treating some of the inordinate costs attributed to smaller publications as institutional costs on the theory that they are essentially caused by the obligation of the Postal Service under § 101(a) of the Postal Reorganization Act to bind the nation together (discussed *infra*).*See* Docket No. R90-1, Rec. Dec. ¶3720 (treating Alaska Air costs as institutional costs on theory that they are essentially caused by obligation of the Postal Service under § 101(a) to serve the entire nation), as shown, in part, by the much higher rates Complainants would pay at Standard rates. Tr. 1/108 (Stralberg) and Tr. 6/1741 (Cavnar).

file and supplemental mailings were identical, the large per-piece rate differential must reflect the higher postal costs of handling smaller, less dense mailings. The same point was made by witness McGarvy but in a different way (Tr. 1785), comparing the postage per piece paid by publications of Complainants with the per piece rate for an ABM publication (*Creativity*) that had similar physical characteristics but smaller circulation:

Publication	**Present**	**Proposed**
Time	17.67¢	15.3¢
Newsweek	17.44¢	14.51¢
TV Guide	16.54¢	12.39¢
Reader's Digest	20¢	17¢
Creativity	30.14¢	44.47¢

Witness Mitchell necessarily agreed that Periodicals rates are indeed already cost-based to a substantial degree — at least as much as First-Class and Standard mail. Tr. 3/935-36, 940-946**,** 1184-1185 ("over a period of 33 years, we have made extensive adjustments to periodicals, and I think all of them have been based on costs"). However, while Mitchell essentially conceded that periodicals rates are cost based, he maintained that they were not "sufficiently cost-based." Tr. 3/1185. In a similar vein, witness Stralberg was asked about witness Bradfield's call for "'measured changes that are likely to produce lower postal service processing costs without imposing undue hardship upon a segment of the periodicals class.'" Tr. 6/1586-87. Witness Stralberg responded:

> He [Bradfield] says he's in favor of studies and measured changes. What we are proposing in this case are far more radical changes.

Tr. 5/1587. The ultimate issue in this proceeding thus revolves not around whether Periodicals rates should be modified to become more cost-based, but whether movement toward greater cost recognition should be "measured" or "radical."

Complainants' proposed "radical" de-averaging of Periodicals costs and rates would by no means help those publications that have already borne the brunt of the inordinate cost increases cited by witness Mitchell as justification for the proposal. To the contrary, Complainants' proposal would have a potentially severe adverse impact on many small publications -- the very publications that have already borne the brunt over the years of the anomalous inordinate costs referred to by witness Mitchell. Complainants' proposal would: (1) impose double-digit (in some cases approaching triple-digit) rate increases on many smaller publications -- in order to pay for "windfall" postal savings to relatively few large publications like those of Complainants, who would reap savings of nearly $60 million per year without any change in their mailing practices or savings to the Postal service;[2] (2) would impose those rate increases on top of a potentially double-digit general rate increase request by the Postal Service in the omnibus rate case expected early next year; and (3) would have a strong tendency to shift the institutional cost burden for Periodicals significantly and permanently from larger mailers to smaller mailers, resulting in both unfairness and less efficient price

[2] *See* McGarvy Exhibit JM-1(corrected), Tr. 6/1789-90. As shown there, Time Warner would save nearly $29 million per year, Conde Nast would save more than $10 million per year, Readers Digest would save more than $6 million per year, Newsweek would save more than $4 million per year and TV Guide would save more than $13 million per year. Among Time Warner publications, *Time* would decrease from 17.67 to 15.3 cents per copy, *Sports Illustrated* would decrease from 18.73 to 15.4 cents per copy and *People* would decrease from 19.12 to 16.76 cents per copy, or collectively more than $13 million per year.

signals, as the Commission well recognized in the parallel MC95-1 case (discussed in part II.B, *infra*). In this light, the anomalous costs attributed to Periodicals (but borne disproportionately by smaller publications) over the years provides no justification whatever for the radical de-averaging proposed by Complainants, but instead is itself a powerful reason to *reject* such de-averaging.

B Complainants Are Unable to Meet Their Burden of Proof in This Proceeding.

Complainants bear the burden of proof, including both the burden of producing substantial evidence in support of its proposals and also the ultimate burden of persuasion. *See* 5 U.S.C. sec. 556(d); 39 U.S.C. sec. 3624(a); *Director v. Greenwich Collieries,* 512 U.S. 267 (1994). The ultimate burden of persuasion means that even if the Commission were to find that Complainants had met their burden of producing sufficient substantial evidence on all material issues, Complainants nevertheless should not prevail if the Commission were also to find that the countervailing evidence presented by other parties was in the aggregate no less substantial. In that event, any doubts should be resolved against Complainants. *See Greenwich Collieries*, 512 U.S. at 281.

Complainants' burden of proof extends to all of the statutory ratemaking and reclassification factors, including the impact of their proposal on other Periodicals mailers, and on the widespread dissemination of editorial content through the mail. *See, e.g.*, Tr. 6/2232 (Tang); R2001-1, USPS-T-34 (Taufique) at pp. 5-8. The Commission held in MC95-1 (¶¶ 2084, 2132-33, 3087-89) that under the statute, it could not defer such issues until future rate cases when adverse impact becomes more manifest;

rather, it must take a cautious, long-term view of major reclassification proposals before it. Complainants have not and cannot counter the evidence that under their proposed rate structure, many thousands of smaller publications would face a range of double-digit rate increases (*see* Tr. 6/2231) (Tang)[3] — *on top* of a potential double-digit general increase in the rate case expected early next year. Witness Mitchell simply ignored this issue. See Tr. 3/825, lines 8-11, and 3/1033. Intervenors have likewise thoroughly rebutted witness Mitchell's attempt to prove that elimination of the longstanding uniform editorial pound charge would have no effect on the widespread dissemination of editorial content. *See* part III.E, *infra*.

Complainants should be held to a *heightened* burden of proof in this proceeding, for two reasons. First, Complainants challenge long-standing and carefully considered policies of the Commission. In the words of the Supreme Court: "A settled course of behavior embodies the agency's informed judgment that, by pursuing that course, it will carry out the policies committed to it by Congress. There is, then, at least a *presumption* that those policies will be carried out best if the settled rule is adhered to." *Atchison, Topeka & Santa Fe Ry. v. Wichita Board of Trade*, 412 U.S. 800, 807-08 (1973)

[3] To get a sense of the orders of magnitude, if the results of witness Tang's sample were extended to all 25,000 small Periodicals, some 7,250 small publications would face at least a 30% rate increase , and some 3,250 small publications would face a rate increase of at least 50%. *See also* part II.C.4, *infra.* Medium-circulation publications could also be adversely affected. Witness Stralberg's analysis of American Business Media mail.dat files (Tr. 5/1579-81) shows that 21% of the sampled publications would face a double-digit increase, 12% would face a 20% increase and 3% would face a 50% increase. Likewise, among the American Business Media publications sampled in Bradfield Exhibit LB-1 (corrected and revised per POIR-3)(Tr. 1703-06) some 33% would face a double-digit increase, 15% would face a 20% increase and 7% would face a 50% increase. American Business Media submits that the consistency of the impact information on Exhibit LB-1 with other impact data in the record moots any adverse inference that might arise from the fact that the Exhibit could not be replicated.

(emphasis added).[4] Second, the Commission recognized in Order No. 1399, at 11, that a complaint proceeding under § 3662 of the statute, and sections 82 and 83 of the Commission's rules of practice, requires more of complainants than would be required of intervenors in a reclassification case -- it requires Complainants to allege and prove a *clear* violation of the statute, such that its remedy could not be unfair to parties not represented in the complaint proceeding. *See also* Governors' Dec., C99-4, at 5 ("complainants have a higher burden to meet" than simply to better align the rate structure with statutory factors). Potential complainants would otherwise be encouraged to initiate contentious reclassification proceedings at will.

Complainants have failed to meet even a minimal burden in this regard, much less an appropriately heightened one. Complainants have utterly failed to show, as they alleged to the Commission, that the outside-county Periodicals rate structure is "so outmoded and inapposite that the rates it generates *ipso facto* violate controlling provisions of the Act." Order 1399, at 11. Rather, as pointed out by Postal Service witness Tang, the Periodicals class has already benefited in recent years from particular attention and progress toward a more efficient and cost-based rate structure. Cost increases attributed to Periodicals mail appear to be leveling off. *See* Tr. 6/2155-56 (Miller).

Co-mailing and co-palletization opportunities are growing rapidly under the *current* rate structure, and several printers as well as a freight consolidator have recently announced major new initiatives and investments in co-mailing and/or co-palletizing for the publishing industry. *See* Tr. 5/1438-40 (O'Brien), 6/1779 (McGarvy), 6/1933

[4] Thus, while an agency could justify adherence to its settled policy simply by reference to its prior decisions (*id.* at 807), it must provide an adequate explanation any departure (*id.* at 808), which is subject to "heightened" judicial review. *NAACP v. FCC*, 682 F. 2d 993, 998 (D.C. Cir. 1982).

(Schaefer). Magazine publishers are increasingly seeking out and taking advantage of co-mailing and/or co-palletization opportunities, with the active encouragement of American Business Media.. *See* Tr. 6/1700, 1724, 1780, 1933, 1938.

This growth no doubt results from the fact that, as Complainants' witness Schick testified (Tr. 2/403, 504), there are adequate co-mailing/co-palletization incentives for Periodicals under *today's* postal rates.[5] American Business Media witness Bradfield, the only other witness with printing experience, agreed. Tr. 6/1697. Witness McGarvy testified that printers would not be moving ahead with major investments based on speculation that the Commission might recommend (and the Governors might approve) Complainants' proposed rate structure. Tr. 6/1779. Complainants' witness O'Brien agreed. Tr. 5/1472-74.

Progress in the magazine printing industry is not "stunted," as witness Mitchell asserted (Tr. 3/1037), although co-mailing and/or co-palletization will remain beyond the reach of many publications for the foreseeable future, regardless of any changes in Periodicals rate design. *See* part III.C.4, *infra.*

C. The Commission Should Not Recommend a Shell Classification in the Circumstances Presented.

Under the circumstances, we respectfully submit that the Commission should not recommend any shell classification. In the words of witness Tang (6/2232): "redesign of rate structures cannot be fully assessed or accomplished without a simultaneous design of the actual rates for the structure." This observation is fully consistent with the Commission's approach in the analogous Periodicals reclassification case of MC91-3,

[5] Schick noted that today's rates also provide sufficient drop-ship incentives (even with a flat editorial pound rate) to drop-ship publications with as much as 85% editorial content, or more. Tr. 3/436, 524-25.

discussed below. Moreover, mail preparation rule changes (e.g., minimum pieces per sack) are a potential alternative to the proposed de-averaging of rates (*see* Tr. 1/187 (Stralberg); 6/2160 (Miller)), and the need to preserve flexibility for the Postal Service has in the past (e.g., in R87-1) led the Governors to reject shell classifications for Periodicals. These considerations are all the more applicable where the proposed reclassification would involve fundamental de-averaging of rates that would shift *institutional* as well as attributable cost burdens from larger to smaller publications -- as would be the case here no less than in the closely analogous MC95-1 proceeding, discussed in part II.B, *infra.*

At most, the Commission should suggest that the Postal Service consider issues raised by various parties in this proceeding, but the Commission should allow the Postal Service to take the lead on any fundamental reclassification issues. *See* Tr. 3/902 (Mitchell).[6] Only this approach would allow for full consideration of a critical factor — the impact of reclassification on Postal Service operations. *See* Tr. 6/2232 (Tang); 6/1931 (Schaefer). For example, witness Miller has testified (6/2161-65) that the larger bundles and sacks that may flow from the proposed rate structure could *increase* the costs of the Postal Service, both through increased package and container weight and increased bundle breakage. Further, witness Mitchell has acknowledged that the effect of larger sacks on the level of service is "an important [question] that needs attention." Tr. 3/1085 citing Schick, Tr. 2/371. The Commission has in the past rejected

[6] On May 8, 2003, before he testified in this case, Complainants' witness Mitchell told the Envelope Manufacturers Association that even though postal rates were in need of overhaul, "USPS must do studies to support the changes," that the studies "are needed now," and that "[t]he changes cannot be made by the Rate Commission." *Id.* On cross examination, Mitchell conceded that to his knowledge, the studies necessary for an overhaul of postal rates had not been undertaken. Tr. 3/1146-47.

reclassification proposals by mailers that could conflict with the operational efficiency of the Postal Service. *See* MC91-3, at ¶¶ 3006-12; R84-1, at ¶¶ 5252-5255.

Moreover, the Postal Service is better positioned than private parties to balance competing interests. In particular, apart from its unique access to relevant data, the Postal Service has in the past proven willing and able to engage in a broad consultation process with the mailing community as a whole — designed to achieve maximum consensus prior to proposing fundamental classification changes, and facilitating wide participation by mailers in the reclassification proceeding itself. *See* MC95-1, ¶ 2088. By contrast, this complaint proceeding is narrowly focused on pursuing Complainants' financial interests at the expense of thousands of smaller mailers that, unlike in MC95-1, are not represented in this proceeding, presumably because they were caught by surprise and had not budgeted for litigation against a deep pocket like Time Warner et al.

Both McGraw-Hill and ABM could support further, measured progress toward a more cost-based rate structure for outside-county Periodicals mail in order to discourage practices that drive up postal costs with little or no benefit to mailers. *See, e.g.,* Tr. 6/1944-45, 1954-55 (Schaefer); 6/1695 (Bradfield). Indeed, many of our publications -- McGraw-Hill's *Business Week,* for example -- could well benefit financially from such progress. So could the many ABM member publications that have begun to co-palletize or co-mail, or will soon do so as printers add the capability. However, we cannot support an approach that does not appropriately balance all the statutory factors – particularly ECSI and impact on smaller publications -- so as to preserve a broad, vibrant and diverse Periodicals class in accord with the Commission's precedent.

II. THE PROPOSED RATE STRUCTURE IS BASED ON EXTENSIVE BOTTOM-UP DE-AVERAGING THAT IS AT ODDS WITH COMMISSION PRECEDENT APPLYING FUNDAMENTAL STATUTORY PRINCIPLES

Complainants have proposed what witness Stralberg has characterized as "radical" de-averaging of Periodicals costs and rates. (Tr. 5/1587). American Business Media and McGraw-Hill have called instead for a more balanced approach that (1) enhances efficiency as appropriate through more moderate and measured de-averaging — *i.e.*, through discounts from average-cost rates — but (2) does not sacrifice the broad diversity of editorial content among Periodicals. *See, e.g.,* Tr. 6/1695 (Bradfield), 1943-47 (Schaefer), 2233 (Tang). In the words of witness Schaefer: "rate averaging is to a considerable degree the glue that holds the class together, and the price for the preferential rates afforded the class as a whole." Tr. 5/1747. This more balanced approach is fully in accord with Commission precedent, to which we now turn.

A. The Commission Has Refused to Subordinate "Editorial Diversity" to "Cost Tracking."

In Docket No. MC91-3, a proposed pallet discount for Periodicals (then called "second-class") mail presented the Commission with a "difficult classification issue" (¶1003) that is likewise presented in the current proceeding. In the words of the Commission: "A pallet discount requires de-averaging second-class mail costs primarily for the benefit of large circulation publications, and to the detriment of small circulation publications. Testimony heard in this case indicates only about 560 of 26,000 periodicals will benefit from the recommended discounts." *Id.* Further, the discount amounted to a "*windfall*, rewarding present palletizers for an activity they have

undertaken for their own reasons (not necessarily connected with cost savings within the Postal Service)." *Id.* ¶1022 (emphasis added).[7]

In coming to grips with this issue in MC91-3, the Commission recognized that while costs were an important element of ratemaking, taking into account the effect on smaller Periodicals "who may have more limited options" was "especially" important (¶4027), and the "policy favoring widespread dissemination of information is *uppermost*"[8] —in accord with the "national policy that an informed citizenry is an important attribute of a working democracy. *Id.* ¶1009. These overriding "ECSI" policies in turn led the Commission to recognize the "*importance of diversity* among second-class periodicals:"

> This is so largely because of the great importance to second class of a noncost statutory criterion: the educational, cultural, scientific, and informational ["ECSI"] value of mail to the recipient. § 3622(b)(8). We emphasize the last three words because they imply that each individual publication may have elements of value that other publications do not. Publications differ widely in their subject matter, approach, and general appeal to one reader or group of readers rather than another. Where we are told, as we are in § 3622(b)(8), to consider the value of publications to individual readers, ***we cannot allow the policy of cost tracking — valuable and necessary as it is — to endanger the diversity of news, information, and opinion which second-class helps promote.***

[7] Similarly, in R87-1, the Commission was "concerned that a pallet discount provided to mailers who palletize for their own purposes may have a severe negative impact on postal revenues" (¶5422) unless rates for non-palletizers were raised commensurately. The Commission observed that even in 1987, "many large publications already use[d] pallets to a significant degree" (*Id.*) — including *Readers Digest* at 98%, *Newsweek* at 93% and *Time* at "' more than'" 90%. *Id.* n. 116. The Commission noted in MC91-3, ¶1006, that "[l]arge mailers … have used pallets for at least a decade[] simply because they can move their product more efficiently — they save money."

[8] *Id.* ¶4029, ¶4072 (emphasis added). *See also* MC95-1, ¶2072 ("Supreme Court … held Congress did not require cost-of-service techniques to be used to the maximum extent" but rather deferred to the Commission and allowed it "considerable flexibility" in apportioning costs); R94-1, [¶ 4016] (section 101(a) of Postal Reorganization Act of 1970 requires consideration of all statutory policies "rather than allowing efficiency to dominate").

Id. ¶1017 (underscoring original; italics and bolding added). *See also id.* at ¶1015 ("national policy in favor of the widespread dissemination is intended to encourage the availability of both large circulation and small circulation publications"); ¶1018 ("if the current diversity is threatened, the first publications to suffer would predominantly be smaller ones"); *See also* Tr. 6/2231 (line 22) (Tang) (more than 20,000 small publications account for "large proportion of the editorial content in Periodicals").

The Commission concluded in MC91-3, ¶1024, that it is "necessary to balance carefully … the apparently conflicting demands of cost tracking and editorial and informational diversity." This balance was achieved in MC91-3 in two basic ways. First, while the Commission recommended a modest pallet discount that benefited only a relatively few large publications that had long been palletizing anyway for their own reasons (thus the discount did not generate any new savings for the Postal Service), the Commission insisted that no other mailer should pay higher rates as a result. Second, the Commission rejected any deviation from the uniformly low editorial pound charge (limiting the recommended pallet discount to the advertising pound charges).[9]

In MC91-3, the Commission was able to recommend a windfall discount (with no new savings), without raising other rates to make up for the lost revenue, only by positing a lower cost coverage for the Periodicals class.[10] That option is not apparently available presently in view of the current 101% cost coverage for Periodicals. Non-palletizers were further protected in MC91-3 because — like other worksharing

[9] *See generally id.* ¶¶1016, 1036, 4030, 4053, 4063, 4102, 4111. The Commission had struck a similar balance in R90-1, as noted in MC91-3, ¶1058. However, the pallet discount proposed by Time Warner as recommended by the Commission in R90-1 was not approved by the Governors of the Postal Service.

[10] *See id.* ¶4033; R90-1, ¶5309. The pallet discount recommended in MC91-3 was not approved by the Governors, in part due to an unanticipated shortfall in second-class revenue.

discounts — the recommended pallet discount did "not decrease the amount of institutional costs the mailer [receiving the discount] must pay." *Id.* ¶4037. The Commission noted in this regard that a "similar balancing has taken place in providing discounts for presortation, a mail preparation activity which is generally more available to large publications with dense delivery patterns, while assuring that those discounts reflect only the benefits of specifically avoided processing [costs]." *Id.* ¶1013.

A far more extensive de-averaging of Periodicals costs is proposed here than in MC91-3, and the potential adverse effects on smaller mailers are far more severe. Under the rate structure proposed by Complainants, the balance struck by the Commission in MC91-3 would be turned on its head: the goal of "cost tracking" would take precedence over "diversity of news, information and opinion." Specifically, Complainants would receive an enormous windfall in the form of lower rates for mail practices that they have been following for decades in order to obtain non-postal cost savings and timely delivery, while thousands of smaller publications would face commensurate rate increases — often in double-digits and in some cases staggering — in order to pay for Complainants' windfall. Further, the flat editorial pound charge would be jettisoned. Moreover, the proposed rate structure, would inevitably shift institutional costs from larger low-cost mailers to smaller mailers (as discussed in part II.B, *infra).*

Both Postal Service and intervenor witnesses in this proceeding have urged the Commission to reject the proposed rate structure in favor of the established and ongoing approach of balancing efficiency with diversity, by providing appropriate cost-based discounts from rates that are based on cost-averaging. The Commission

strongly agreed with such view in Docket No. MC95-1 (addressed below), where it rejected a proposal for de-averaging of Periodicals rates that was very similar to Complainants' current proposal, and instead endorsed cost-based discounts as the way to encourage efficiency without jeopardizing diversity or shifting institutional costs to smaller mailers.[11]

B. The Commission Has Recognized That Taken Too Far, De-Averaging Is Neither Fair Nor Cost-Based.

1. *Time Warner et al. Essentially Seek to Obtain Here What the Commission Denied Them in MC95-1.*

Docket No. MC95-1 involved a similar proposal (supported by Time Warner et al.) for extensive de-averaging of Periodicals costs and rates.[12] The Commission observed in MC95-1 that "'[i]n postal ratemaking, a subclass is a grouping of mail across which attributable costs are measured and averaged….'" *Id*. at ¶3018. Under the proposal in MC95-1, in lieu of the traditional averaging of the lower costs attributable to high-circulation/density publications with the higher costs attributable to low-circulation/density publications, the outside-county subclass would have been split in two. Generally speaking, a relatively few larger, lower-cost publications would have been placed in a new subclass which excluded thousands of smaller, higher-cost

[11] In MC91-3, the Commission suggested that there might be greater latitude for de-averaging of Periodicals rates to the extent that large Periodicals mailers might otherwise switch to alternate delivery options. *Id.* ¶4039. In MC95-1, however, the Commission found that there was no evidence of any significant alternate delivery options for Periodicals mailers. *See id.* ¶5265. Complainants do not suggest otherwise in this proceeding. *See* Tr. 1/310 (Stralberg, on the effect of the "mailbox rule").

[12] Any cost-based discount from average-cost-based rates involves moderate de-averaging of those rates, as recognized by the Commission in MC91-3 (¶1003) and by Postal Service witnesses Tang and Miller in this case. *See* Tr. 6/2160, 2225. A hallmark of more radical de-averaging would appear to be proliferation of fully cost-based (bottom up) rates in lieu of discounts, as discussed *infra*. *Cf*. MC95-1, ¶3036. In the current proceeding, Stralberg developed "separate and distinct 'bottom-up' piece, bundle and container costs." Tr. 6/2162, lines 14-15.

publications, such that their higher costs would no longer be averaged with the lower costs of larger magazines.[13]

It was recognized in MC95-1 that a similar scope of de-averaging could be

> replicated without [separate] subclasses, by defining a more complex price structure for the postal class. Thus, the question of whether rate reform should be pursued through redefining subclasses or through altering the rate structure for existing subclasses is, in theory, vacuous, since the difference is purely one of semantics, not substance.

Id. ¶5232 (quoting witness Shew approvingly). In substance, therefore, the similarity between the proposal in MC95-1 and the proposal here can perhaps best be gauged by the similarity in potential rate impact upon small and large mailers, respectively. The proposed de-averaging in MC95-1 would have resulted in an average rate increase of 17% for smaller publications and an average rate decrease of 14% for larger publications. *Compare* note 3, *supra.* The Commission rejected the proposed de-averaging in MC-95-1.

2. *De-Averaging Should Not Undermine Diversity of Content.*

In rejecting the de-averaging of Periodicals costs and rates that was proposed in MC95-1, the Commission relied in part on factors emphasized in MC91-3, *i.e*., the negative financial impact on thousands of smaller publications and thus on the diversity of editorial content which is of "uppermost" importance in postal ratemaking for Periodicals. (MC91-3, ¶4029). *See, e.g.,* MC95-1, ¶ 5132 (proposed de-averaging "might make the formation of new periodicals more difficult by withholding the most favorable rates from publications which have not attained significant levels of market penetration"); ¶5134 (rejecting "heavy emphasis on 'changing mailers' behavior' and

[13]Neither a flat editorial pound charge nor any other editorial benefit would have been included in the rate structure for the proposed new subclass.

'driving costs from the system' without full appreciation of the impact this may have" on many publishers who cannot change or who could do so "only after considerable adjustments in almost every aspect of their operations"). This reasoning is fully applicable here as well. *See also* part II.D, *infra.*

3. *De-averaging Should Not Shift Institutional Cost Responsibility from Large to Small Mailers, Which Is Both Unfair and Inefficient.*

The Commission focused in MC95-1 on the fact that replacing discounts from average-cost-based rates with de-averaged bottom-up-cost-based rates would lead inexorably to a shift in institutional cost responsibility that would not only be unfair to smaller mailers and increase their financial burden, but also send *non*-cost-based and *in*efficient price signals to larger mailers. *See, e.g.*, ¶¶ 5233-5235 (agreeing with ABP testimony that recognizing cost differences through subclasses instead of rate categories generally shifts institutional cost contribution per piece to high-cost mailers, and "provides excessive signals to mailers to meet certain requirements" and thus "violates efficiency notions"), ¶5245 (economic testimony supports Commission's practice of "recognizing cost distinctions through discounts," which make it "possible to approach rates where the pieces in a subclass tend to make the same contribution to institutional costs, and 'technically efficient' price signals are sent to mailers").[14]

[14] *See also* ¶¶2076-2077 (institutional cost assignment below subclass level "can be more easily controlled … by creating discount categories," which enable the Commission to "implement cost-based pricing without compromising other policies"), ¶3031 ("rate discounts encourage productive efficiency, while separate subclass pricing can impair economic efficiency"), ¶3133 ("workshare discounts …. constitute a major innovation in rate design developed since the passage of the Act"), ¶4260 ("the most accurate productive efficiency signals are given by discounts from overall subclass rates that …. signal to mailers the Postal Service's costs of producing the workshare component, undistorted by any markup. … Subclass rates, because they incorporate markups over marginal costs, are not capable of sending undistorted signals").

Time Warner and others nevertheless argued in MC95-1 that each mail piece should pay an equal *percentage* markup for institutional costs (i.e., equal implicit cost coverage), which would result in higher-cost mail paying more institutional costs while lower-cost mail would pay less. Bottom-up-cost-based rates within a subclass (i.e., "de-averaged" rates) would tend to have equal percentage markups. Time Warner argued that discounts from average-cost-based-rates were "inherently deficient" (¶5197) because they equalized contribution per piece, which meant mathematically that lower-cost mail would have a higher *percentage* markup while higher-cost mail would have a lower percentage markup. Likewise, witness Mitchell has sought in the current proceeding to defend the concept of equal implicit cost coverages. Tr. 3/1023.

The Commission emphatically disagreed with Time Warner in this regard in MC95-1. *See* ¶¶ 3066-3068 (salutary premise of discounts is that "everyone benefits" — "including mailers that are unable to take advantage of the discount" — so long as discounts do not exceed Postal Service cost savings), ¶ 3069 (equal implicit cost coverage argument "challeng[es] the basic premise that everyone should benefit from worksharing. *The Commission rejects this assault on the concept of worksharing*. Worksharing as currently implemented is both fair as well as consistent with sound economic pricing principles") (emphasis added), ¶ 3072 ("there is no reason to shift institutional burdens from mailers who already benefit from a financially advantageous discount rate to other mailers, many of whom may not be able to take advantage of the discount"), ¶ 3075 ("Lowering the implicit cost coverage for worksharing categories could result in discounts which exceed the costs avoided by the Postal Service. … Consequently, the total cost of mail would rise for society at large, and postal rates

would not achieve the goal of the lowest, joint mailer/Postal Service cost), ¶ 3079 ("[T]he most important reason for using a discount approach to recognize cost distinctions brought about by worksharing is that the Commission has determined that this is most fair and equitable to all mailers. Worksharing mailers receive a price reduction based on avoided costs while residual mailers are no worse off. To have applied equal cost coverages … would have resulted in the inequity of increased rates for residual mailers when the cost of their mail did not rise"), ¶¶ 1021-1022 ("equalizing implicit coverages between workshare mail and non-workshare mail sends improper economic signals, results in productive inefficiency, overcompensates the workshare mailer, and results in an increase in the total cost of mail for society at large").

Time Warner et al. should not be permitted to gain in this proceeding what the Commission so emphatically denied them in MC95-1. This distinct issue that was a focus of MC95-1 — that a bottom-up de-averaging approach, as opposed to the established discount approach, would both unfairly shift institutional costs to higher-cost mailers and also send inefficient price signals to lower-cost mailers — is no less important in the current proceeding, notwithstanding the currently low cost coverage for Periodicals mail as a whole. As the Commission declared in MC95-1, ¶¶3088-3090:

> By limiting itself to speculation about future coverages, and by choosing to ignore the future impact on mailers of those coverages, the Postal Service has left itself unable to refute … contentions … that its proposals will have severe negative impact ….
>
> Several participants suggest that any negative impact which might arise from reclassification can be ameliorated by the Commission [in future rate cases] ….This is no answer. The Act directs the Commission to consider certain specific factors when it is recommending classification changes. These include the effect of classification on different kinds of mail matter ….

> Parties which suggest that the Commission need not consider these factors if it can also consider them in the ratemaking process are, in effect, suggesting that the Commission can and should ignore a specific classification criterion set out by the Congress. The Commission will nor follow this advice.

See also id. ¶2084 (classification standards "require a longer term view, at least in major proceedings").

The Commission's obligation to "evaluate the probable ramifications of its recommendations," coupled with the "limited state of the record," led the Commission in MC95-1 to approach major reclassification proposals "with caution" and "reinforce[d] concern for those mailers whose own economic efficiency inhibits them from contributing to that of the Postal Service." *Id.* ¶2133. The same caution and concern is fully warranted here.

C. The Proposed Rate Structure May Not Be Truly Cost-Based.

Postal Service costing expert Miller testified that the cost data he developed for Docket No. R2001-1 that was used by witness Stralberg to develop Complainants' proposal in this proceeding, while appropriate for its original purpose of determining cost differences related to rate discounts, "may not have been appropriate as bottom-up cost estimates." Tr. 6/2160. Miller further testified that the "centerpiece" of Stralberg's methodology in this proceeding was similar to one used by the Postal Service in Docket No. R2000-1, which was "not created to support a grid rate analysis," and "may not necessarily be appropriate in the context in which it has been used" by Stralberg. Tr. 6/2161 (heading and text).

Witness Miller also noted that witness Stralberg discovered an issue with "only one input to the cost model" which, when changed by Stralberg, "sharply' increased the cost

estimates." Tr. at 6/2158. While Stralberg sought to justify his approach by testifying that he was "not aware of any study that attempted to calculate the actual statistic in question," it is witness Miller's experience that "[i]n these cases, special studies may be required." *Id.* (footnote omitted). This is consistent with witness Mitchell's statement to the Envelope Manufacturers' Association Postal Service-conducted studies are essential before postal rates can be redesigned. *See* note 6*, supra.* However, Stralberg was less interested in "studies and measured changes" than in "far more radical changes" that benefited Time Warner et al (Tr. 5/1587) — an approach suggestive of Quad/Graphics' "ready, fire, aim" philosophy.[15] Tr. 2/345.

Thus, in developing the proposed new rate structure, witness Stralberg selected certain cost drivers but not others, thereby painting an incomplete picture if the goal was to develop a truly cost-based rate design. *See* Tr. 6/2154, 2157. Moreover, Stralberg relied on bundle breakage statistics based on use of SPBS bundle-sorting machines, which are now being replaced by AAPS machines which should result in lower levels of bundle breakage, according to witness Miller. Tr. 6/2144.

If the Postal Service itself lacks cost data appropriate for "bottom-up cost estimates," then it could not be expected to implement a truly cost-based rate structure even if Complainants' proposal were to be recommended by the Commission and approved by the Governors. Further, absent relevant cost data, the Commission would not seem to be in a good position to evaluate the impact of the proposed rate structure on mailers, as required by the Postal Reorganization Act. And in order to obtain such data, it is conceivable that the Postal Service would have to change its cost measurement

[15] As aptly stated by witness McGarvy, "ready, fire, aim" may be a "valid and profitable corporate philosophy for Quad/Graphics," but it is not "an appropriate credo for the Postal Service." Tr. 6/1778.

methodology in major ways over time. These cost issues alone present sufficient reason for the Commission to reject the proposed rate structure in this proceeding. *See* MC95-1, ¶3036 ("As a further basis for retaining presort as a category, with its rate set as a discount rather than fully costed, the Commission found that separately developed cost and revenue data were lacking in the record")

D. Complainants Have Not Met Their Burden of Proof That the Proposed Rate Structure Would Not Undermine Diversity of Editorial Content.

1. *For Many Publications — Particularly Small Publications and Weeklies — Co-Mailing and Co-Palletization Are Not Feasible Options for Mitigating the Adverse Rate Impact of the Proposed Rate Structure.*

Complainants' witness Schick, an obvious and enthusiastic fan of co-mailing, was nevertheless candid about its limitations (and the limitations of co-palletizing). He explained, for example (Tr. 2/388), that even at Quad/Graphics, weekly publications that "cannot add time to their schedule" and publications that "utilize inside the book inkjet and personalization technology" cannot co-mail. He later acknowledged (Tr. 2/414) that publications with daily or weekly production schedules that are difficult to adjust, publications with digest or tabloid trim sizes (see also Tr. 2/449), publications that use printed polywrap and publications with multiple pieces inserted in the polywrap would not likely find it feasible to engage in co-mailing in an effort to mitigate potentially severe rate increases under Complainants' proposed rate structure. Schick further acknowledged that publications with circulations (or versions) below 1,500 pieces cannot practically be co-mailed (Tr. 2/448). Moreover, publications that must be able to change their print runs at the last minute, such as to accommodate late-breaking news,

could face severe financial penalties by virtue of participation in a comail pool. Tr. 2/418 (Schick).

Similarly, witness Cavnar, who has extensive experience with co-palletization (Tr. 6/1722-23), testified that co-palletization "is not and will not be available to many periodicals for a number of reasons" (Tr. 6/1722), including "publication frequency, trim size, inserts, and circulation size." Tr. 6/1724. See also Tr. 6/1939-40 (Schaefer) (unsuitability of weeklies for co-mailing or co-palletization).

Witness McGarvy testified that "there are many out there who are not represented in this case and who, due to their size, are not candidates for co-anything." Tr, 6/1783. McGarvy observed in this regard that "[s]mall printers of short-run publications may simply not have the volumes necessary to create efficient pools" for co-mailing or co-palletization. *Id.* Short-run printers are likewise much less likely to have the space or capital necessary to establish a co-mailing or co-palletization operation. *See* Tr. 6/1676 (Bradfield) The cost of co-mailing equipment ranges from $500,000 to $2 million (and necessary lead time can exceed two years). *See* Tr. 2/523-24 (Schick), 6/1700 (Bradfield). To the extent that printers do not offer co-mailing or co-palletization, their customers have few options, as printing contracts generally extend for three to five years (*see* Tr. 3/509, 6/1698-99, 1937). With only one known exception, and that for a printer that has not yet begun to offer the service, those printers that offer co-mailing or co-palletization generally do so only for their own printing customers, and not to publications that are printed elsewhere. *See* 5/1438, 1494 (O'Brien), Tr. 6/1938 (Schaefer).

While there are thus many reasons why co-mailing and co-palletization may not be feasible options for some publishers, a great many publications are unable to participate in such programs because they are published weekly or more frequently and/or because they have a relatively small circulation. As shown by witness Tang, small publications constitute the vast majority of outside-county Periodicals and account for a "large proportion of the editorial content in Periodicals." Tr. 2231. There are more than 15,000 small publications that have a circulation of less than 1,000[16] — well below the minimum 1,500 circulation for co-mailing according to witness Schick (Tr. 3/448). Further, of the more than 25,000 Periodicals with a circulation not exceeding 15,000, more than 6,000 are in all likelihood precluded from co-mailing or co-palletization because they are published weekly or more frequently.[17]

Thus, the thousands of small publications that are most likely to incur dramatic rate increases under Complainants' proposed rate structure are also the publications least likely to be able to mitigate such rate increases through co-mailing or co-palletization. While we applaud the recent growth of co-mailing and co-palletization opportunities for relatively large publications that would tend to receive rate decreases under Complainants' proposed rate structure, this development is not at all likely to temper much of the adverse rate impact on small publications.[18]

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[16] Response of Postal Service Witness Tang to Notice of Inquiry No. 1, filed September 1, 2004, item 1-2.

[17] Response of Postal Service Witness Tang to Notice of Inquiry No. 1, filed September 1, 2004, item 4.

[18] Co-mailing or co-palletization could not in any event remove most of the adverse impact, considering that printers generally take at least one-half of any postal savings as their co-mailing/co-palletization fee, *see* Tr. 1934-37 (Schaefer), and likely as much as two-thirds. Tr. 5/1464-65 (O'Brien).

2. *There Is No Sound Basis to Conclude that Adverse Impact on Small Publications Could Be Avoided Simply by Consolidating Sacks of Mail.*

a. Adverse Rate Impact

Witness Stralberg suggested in his surrebuttal testimony that there is a strong correlation between the "severe" rate increases facing many small publications under the proposed rate structure (Tr. 5/1582) and the use by such publications of sacks containing relatively few pieces of mail (so-called "skin sacks"). Tr. 5/1551. Witness Stralberg concludes in this regard that "the very high potential increases referred to by opponents of the proposed rate restructuring simply will not occur" because they could be avoided if thousands of small publications take "the very simple action of using higher sack minimums." Tr. 5/1552.[19] If it were really so simple to eliminate postal costs to that extent, one wonders why the Postal Service has not long ago taken the very simple action of *setting* higher sack minimums through its rulemaking authority. The apparent answer is that such simple actions may well have complex consequences, both in terms of costs and service.

As an initial matter, the correlation that witness Stralberg seeks to draw between severe rate increases facing small publications under the proposed rate structure and their use of low-volume sacks is far from simple. All "skin" sacks are not equal in this regard. As witness Stralberg acknowledged on cross-examination, "there are many factors that impact how a particular publication would be affected." Tr. 5/1627. These factors include weight, machinability, and editorial content (*see* Tr. 5/1623-26, 1629-31), as well as sack presort level, entry point, and other factors. For example, the higher the

[19] It is worth noting that publishers of smaller circulation Periodicals do not like sacks and their higher costs any more than the Postal Service does. Tr. 2/427 (Schick), 6/1779 (McGarvy), 6/1932 (Schaefer).

editorial content and weight of a publication, and the wider its distribution through the Postal Service, the more adverse the impact will be under the proposed rate structure, even if the publication abjures skin sacks. *See* part III.B, *infra.* Despite seemingly ample data, Stralberg never undertook to quantify *how much* "less severe" the rate increase would be if affected publications changed their sack minimums from 6 to 24 pieces. However, the sample data compiled by Stralberg reveals that some seven publications with 24-piece sack minimums would nevertheless incur double-digit rate increases under the proposed rate structure. *See* Tr. 6/1636.[20]

Further, witness Stralberg fails to consider that the heavier sacks that would be encouraged under the proposed rate structure could have the effect of *increasing* postal costs, and thus increasing the adverse impact of the proposed rate structure on small publications. Postal Service witness Miller testified that container weight, *e.g.*, the weight of sacks of mail, is indeed a cost driver (Tr. 6/2157), and Miller criticized Stralberg for ignoring container weight. Tr. 6/2164-65. Stralberg acknowledged that under the proposed rate structure, mailers would have a strong incentive to minimize the number of sacks used by consolidating their mail into as few sacks as possible — increasing the weight (and decreasing the presort level) of each remaining sack. Tr. 5/1643-45.[21] Complainants have failed to consider the very significant potential cost effect that would result.

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[20] Under Complainants' scenario, those double-digit increases would be imposed in the next omnibus rate case on top of the general rate increase in that case. Witness Stralberg expects the Postal Service to request a "fairly large" rate increase even apart from the proposed rate structure. Tr. 5/1638

[21] Given the proposed sack charge of $3.30, a six-piece sack would cost 55¢ per piece, while a 24-piece sack would cost 13.75¢ per piece, whereas a 100-piece sack would cost only 3.3¢ per piece — a difference of 10.45¢ per piece between a 24-piece sack and a 100-piece sack. Such potential saving would likely amount to a very substantial portion of the total postage.

Assume that a mailer of ten-ounce Periodicals in one hundred six-piece sacks combines those 600 pieces into six 100-piece sacks in order to minimize its postage under the proposed sack charge.[22] The Postal Service would be required to handle 94 fewer sacks, but the sacks it handled would increase in weight from 3.75 pounds to 62.5 pounds (plus in each case the tare weight). Considering that the increased sack weight is a cost driver, it is little wonder that the Postal Service has not embraced Complainants' approach to sacks. *See* Tr. 6/2177. If that approach were implemented, with the result that heavier sacks generated costs not anticipated under the proposed rate structure, the Postal Service would be required to increase the rates for heavy sacks, thus locking in a more "severe" adverse impact of the proposed rate structure on many small publications. The effect could be even more severe to the extent that witness Stralberg may have overestimated savings and underestimated costs in other ways, as discussed in part II.C, *infra*.

The Commission should not take a leap in the dark that puts at risk thousands of small publications and the editorial diversity of the Periodicals class. As we are all acutely aware, Periodicals costs rose inexplicably throughout the 1990s despite very substantial additional worksharing on the part of Periodicals mailers. *See, e.g.,* Tr. 3/912, 1029-30 (Mitchell), 6/1743 (Cavnar). Given the inherent uncertainty of cost and savings estimates, the Commission should be particularly cautious in considering a fundamentally new rate structure that is not proposed by the Postal Service and supported by comprehensive data, but rather opposed by the Postal Service for lack of reliable data — and because the stakes are so high for so many small publications.

[22] Each 100-piece sack would weigh 1,000 ounces, or 62.5 pounds, well under the Postal Service sack weight limit of 70 pounds.

b. Adverse Impact on Service

There is a general perception that more finely presorted sacks tend to receive faster service (Tr. 5/1592) (Stralberg), and that service would deteriorate if Periodicals are moved from 5-digit sacks to heavier 3-digit sacks, or to yet heavier ADC or mixed ADC sacks, as would likely occur under the punitive sack charges proposed. *See* Tr. 6/1753, 1781-82 (McGarvy). Witness McGarvy explained that she holds this perception based upon her many years of experience in the industry, and that it is shared not only by many other mailers but also by local postal officials who have advised mailers that service would be better if they mailed in more finely presorted sacks (Tr. 6/1772). *See also* Tr. 5/1563 (Stralberg).[23] Witness O'Brien, Time Inc.'s Vice President for Postal Operations, testified that even Time uses small sacks for service reasons (Tr. 5/1493) and has done so for as long as he can remember (Tr. 5/1494).

The record reveals a compelling reason why the perception is indeed likely accurate. Stralberg agreed that he has frequently witnessed hampers in Postal Service processing plants that inappropriately contain both Standard and Periodicals bundles. Tr. 5/1618. He further agreed that a more finely sorted pallet that enters the system more deeply before being unloaded would minimize the opportunity for this error to occur. Tr. 5/1619 ("The less you let the Postal Service touch it the better off you are, generally"). Surely, the same phenomenon would hold true for sacked publications: the sooner they are emptied, the more chance that one or more bundles of Periodicals

[23]While Stralberg does not share this perception fully, he does concede the likely advantage of 3-digit sacks over ADC sacks. (Tr. 5/1563). He also acknowledged that many publishers avoid mixed ADC sacks. (Tr. 5/1591). *U.S. News & World Report* appears to be one such publication, since it set only its ADC sack minimum at 6, rather than 24, pieces. (Tr. 6/2101).

would be improperly mixed with Standard bundles and thus delayed.[24] On the basis of this record, it would certainly be appropriate for the Commission to encourage the Postal Service to conduct a thorough test, but it would not be appropriate for the Commission to conclude that moving Periodicals to larger, less finely presorted sacks would cause no serious deterioration of service.

A substantial risk that the proposed rate structure could lead to a significant deterioration of service is a form of adverse impact that the Commission should carefully weigh, under §3622(b)(2) and §3622(b)(4) of the Postal Reorganization Act, in considering whether to recommend adoption of such rate structure.[25] Section 3622(b)(4) broadly directs the Commission to consider the "effect of rate increases upon … business mail users", and is not limited to rate impact. Moreover, §3622(b)(2) specifically directs the Commission to consider "the value of the mail service actually provided each class or type of mail service to both the sender and the recipient."[26] The Commission should not recommend a rate structure that puts a prohibitive price on acceptable service.

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[24] It is logical to assume that the chance of this co-mingling occurring is greater for smaller-circulation publications that are not as easily recognizable as Periodicals as bundles *Sports Illustrated* or *Brides*.

[25] As in Docket No. MC91-3, *supra,* these statutory factors are highly relevant in considering a proposed de-averaging of attributable costs.

[26]Witness Schaefer invokes §3622(b)(2), but for a distinct reason (as McGraw-Hill does not make extensive use of skin sacks). Witness Schaefer testifies that sacks generally receive slower service than pallets, and contends that the Commission should take this into account as a mitigating factor when considering whether to recommend a widened rate differential for sacked and palletized mail. Tr. 6/1947-49. Witness Schaefer states that "below standard service amounts to a regressive tax on the affected mail. To the extent mailers of sacks receive less service than they paid for, they are already in effect paying higher rates than the Commission intended."

III. COMPLAINANTS HAVE FAILED TO PRESENT ANY SOUND BASIS FOR REVERSAL OF LONGSTANDING NATIONAL POLICY REFLECTED IN THE UNIFORM POUND CHARGE FOR EDITORIAL MATTER

A. Overview of the Editorial Pound Charge Under the Governing Statute.

The very purpose for the existence of the Periodicals mail class is to promote the widespread dissemination of diverse editorial (ECSI) matter through the mail. To that end, the editorial portion of Periodicals mail has long been accorded a preferential rate in the form of a low uniform editorial pound charge. Like the stamp rate for a First-Class letter, the Periodicals pound charge for editorial matter is the same — roughly 75% of the zone-1 pound charge for advertising matter — whether the editorial matter is mailed across town or across the country.

The uniform ("flat") editorial pound charge has been maintained by the Commission not only under § 3622(b)(8) of the Postal Reorganization Act (directing the Commission to consider the ECSI value to the recipient of mail matter) but also under § 101(a) of the Act, which provides in part:

> The Postal Service shall have as its basic function the *obligation* to provide postal services to *bind the Nation together* through the personal, educational, literary, and business correspondence of the people.

39 U.S.C. § 101(a) (emphasis supplied). *See* Docket No. R90-1, Rec. Dec. ¶ 5279. While the flat editorial pound charge is not cost-based, it is "financed by advertising rates."[27]

[27] Complainants' Memorandum of Law and Policy Relating to the Editorial Pound Charge for Periodicals, filed December 1, 2004 ("Complainants' Memorandum"), at 7 n. 5, citing testimony by Robert W. Mitchell in R90-1. Witness Mitchell stated in his R90-1 testimony (at 27) that "the lower rate for editorial matter is

In Docket No. R77-1, the Commission rejected a proposal by the Postal Service to replace the flat editorial pound charge with zoned charges for editorial matter, to be set at 75% of the corresponding zoned charges for advertising matter. After noting its similar decision in Docket No. MC76-2 (rejecting proposed zoned pound charges for editorial at same level as for advertising), the Commission declared in R77-1:

> [W]hat shifts the balance decisively against the proposed zoning of editorial matter … is the prospect of detrimental impact upon *small* publications which are mailed to the distant zones. [T]he full rate for a pound of editorial matter mailed to zone 8 would be more than doubled. The effect of such an increase would be felt most strongly by … *national* publications with relatively small circulation — and those which contain a *high proportion of editorial content*. Thus, … the specific zoning proposals before us are particularly objectionable … for imposing the most severe impact on the *smallest mailers with the least advertising resources*.

R77-1, Rec. Dec. pp. 350-51 (emphasis supplied; footnote omitted).

B. Complainants Seek a Windfall at the Expense of Small Publications.

Complainants nevertheless again call for elimination of the flat editorial pound charge, as Time Warner did unsuccessfully in Docket No. R90-1. As in R77-1, the zone-8 pound charge for editorial matter would more than double under Complainants' proposal. *See* Tr. 3/1036-37 (answer to part b). The Postal Service has opposed Complainant's proposal, pointing out that it could adversely impact thousands of small academic journals and other high-editorial publications with national distribution.[28] In the words of witness Tang:

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financed entirely by the higher rate for advertising matter," and that "the lower rate for editorial matter is allowed by the reduced coverage for the subclass" which prevents any unfairly high rate for advertising content in Periodicals. (Underscoring omitted). Since the Memorandum is part of the Complainants' initial brief, it will be dealt with in greater detail in ABM's and McGraw-Hill's reply brief than here.

[28] Statement of Postal Service Witness Tang in Response to Comments of Witness Stralberg in Regarding Notice of Inquiry No. 1, filed December 17, 2004, at 2.

> These small [high-editorial] publications with national distribution are the ones that could face a substantial postage increase under the proposed rates. We should be mindful of this group when discussing policy and rate design, but this group may not have had a voice in these proceedings.

Id. Complainants likewise confirm that a "non-local Periodical with a high percentage of editorial content … would be likely to pay more postage" under the proposed zoned editorial pound charges (other factors being equal) unless it were able to palletize and drop-ship most of its mailed circulation[29] — which is generally not possible for small-circulation publications.

Indeed, witness Stralberg has shown that some 16% of small publications — about 4000 — could expect a double-digit rate increase solely from zoning the editorial pound charge (even with a 10.1¢ per pound editorial discount, and even when only 30% rather than 40% of outside-county Periodicals revenue is derived from the pound rates) if witness Tang's analysis is extended to the subclass as a whole. Further, some 1500 of those small publications would face rate increases ranging from 25% to 47% or more due solely to the zoning of the editorial pound charge (on top of a further rate increase due to other aspects of the rate structure). *See* Tr. 5/1573-74, 6/2232.

Why do Complainants nevertheless again seek reversal of the longstanding national policy underlying the flat editorial pound charge? Complainants argue (as witness Mitchell previously did — unsuccessfully — in Dockets R87 and R90) that zoned editorial pound charges might benefit *other* mailers, including an assumed but ill-defined group of "local"-yet-wholly-outside-county publications, or even ("in the long

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[29] Response of Witness Stralberg to ABM/TW et al.—3, filed December 15, 2004.

run")[30] the small, high-editorial national publications whose pound rates would double under Complainants' proposal. However, no mailer or mailer group other than Complainants and a few large-publication allies has ever opposed the flat editorial pound charge before the Commission, while small-publication organizations (most not represented in this complaint proceeding) have actively supported it.

Complainants' real purpose is self-evident. While Complainants already pay far less postage per piece than smaller mailers,[31] Complainants seek to do better still — through a *windfall* rate reduction paid for solely by increased rates for smaller publications rather than any cost savings attributable to more efficient changes in mailing practices on the part of larger mailers. Specifically, Complainants *already* engage in extensive drop-shipping (private transportation of mail for entry into the postal system closer to the delivery area) to the destination ADC or SCF,[32] and they believe that the pound charges for entry of publications at the destination ADC or SCF would be somewhat lower if the flat editorial pound charge were replaced with 10.1 cent discount per pound of editorial matter. *See* Tr. 3/1128-29.

Further, the proposed cents-per-pound discount for editorial matter would (all other things being equal) result in a greater percentage rate reduction — and a greater

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[30] Response of Witness Stralberg to ABM/TW et al.—3, filed December 15, 2004.

[31] TV Guide currently pays 16.5 cents per piece. Tr. 6/1790. A small-to-medium-circulation publication with 100% editorial content and a typical zone distribution, weighing 9 ounces, would pay 36 cents per piece. *See* Docket No. MC2004-1, USPS-T-1 (Taufique) at 4. *See also* Press Briefing on the R2000-1 Omnibus Rate Proceeding (March 22, 2002), which highlights the following typical rates per piece (among others): 17.5¢ for a weekly news magazine; 32.1¢ for a trade publication; and 26.9¢ for a small nonprofit publication with 80% editorial content.

[32] For example, *Time, Sports Illustrated* and *People* mail only 4.1%, 1.5% and 8.7% respectively to zones 3-8. Tr. 1/116. Most of the Time Inc. monthlies similarly mail less than 10% of their main file copies to these zones. Tr. 1/118. The data are similar for Conde Nast (Tr. 1/122), *Newsweek* and *TV Guide* (Tr. Tr.1/126). *See also* Tr. 3/976 for the percentages of copies entered at a DSCF or DDU.

reduction in cost coverage — for larger/lower-cost publications than for smaller/higher-cost publications. *See* Tr. 3/1035 (Mitchell). Moreover, small high-editorial publications would be less benefited under the proposed discount than under the flat editorial pound charge because the amount of editorial benefit under the proposed discount would increase with weight (all other things being equal) rather than distance mailed, and small publications tend to be relatively light.[33] The proposed discount would therefore be less effective than the flat editorial pound charge as a "way to assure diversity within the [Periodicals] mailstream," and the "first publications to suffer would predominantly be smaller ones." MC91-3, Rec. Dec. p. 8.

C. The Commission Has Repeatedly and Emphatically Rejected Complainants' Arguments.

In Docket No. R90-1, witness Mitchell likewise proposed (on behalf of the Postal Service and with the support of Time Warner) to replace the flat editorial pound charge with a cents-per-pound discount for editorial matter. *See* R90-1, Rec. Dec. ¶ ¶ 5268, 5270. Similarly, in Docket No. R87-1, witness Mitchell proposed to zone the editorial pound charge but provide an enhanced piece discount for editorial matter. *See* R87-1, Rec. Dec. ¶ 5398.[34] In each instance, as in this proceeding, witness Mitchell sought in vain to support a zoned editorial pound charge as necessary to "provide a clearer

[33] *See* Response of Postal Service Witness Tang to Notice of Inquiry No. 1, filed December 1, 2004, item no. 8. Small publications also tend to have a high percentage of editorial content. *See id.*, item no. 5. "Publications of relatively high editorial content tend to be more widely dispersed to the more distant postal zones than publications having an 'average' editorial/advertising mix." MC76-2, Ten. Dec. pp. 10-11. *See also* Statement of Postal Service Witness Tang in Response to Comments of Witness Stralberg Regarding Notice of Inquiry No. 1, filed December 17, 2004, at 2.

[34] In R87-1, however, Time Warner, Newsweek and Reader's Digest joined ABM (then American Business Press – "ABP") and McGraw-Hill in opposing the Postal Service proposal, agreeing that "the current flat editorial pound charge encourages the dissemination of editorial matter throughout the country." *Id.* ¶ 5399 & n. 83.

dropship 'signal' to mailers" and to "improve fairness in near zone rates." *Id.* ¶¶ 5398, 5402*;* R90-1, Rec. Dec. ¶ 5275.

In R90-1, as in the present proceeding, Time Warner witness Stralberg likewise focused on drop-ship signals as a purported justification for zoning the editorial pound charge. *See id.* ¶ 5270; Response of witness Stralberg to ABM/TW et al.-3**.** For small publications, however, drop-shipping would in many cases require co-palletization. (*See, e.g.,* R90-1, ¶ 5273). Further, it ill behooves Complainants to assert that small high-editorial publications might eventually be "better off" under zoned pound rates because they otherwise lack "incentive" to abandon Postal Service transportation. Response of witness Stralberg to ABM/TW et al.-3. The reason why such publications lack such incentive is simply that they already receive a *low* pound rate; only by sharply *raising* it would they "gain" an incentive to use private transportation (drop-ship). This is presumably not an "opportunity" that many small high-editorial publications seek. The Commission was unmoved by this argument in R87-1 and R90-1.

In rejecting the proposed zoning of the editorial pound charge in R87-1, the Commission observed that "such a dramatic structure change will have far reaching rate consequences for certain publications which the [proponent] has failed to adequately address…." *Id.* ¶ 5403*.* The Commission further observed that the piece discount for editorial matter "alleviates witness Mitchell's concerns about fairness to near zone publications." R87-1, Rec. Dec. ¶ 5405.[35] More broadly , the Commission declared in R87-1 that the flat editorial pound charge is

[35] Witness Mitchell likewise confirmed in the present proceeding that in view of the piece discount for editorial matter, short-haul publications receive a substantial net editorial benefit under the current rate structure. *See* Tr. 3/1130-31.

> an important factor in second class [Periodicals] rates and for the existence of the class as a whole. … [E]ditorial content is what separates second-class mail from third-class [Standard] mail. Any removal of the editorial/advertising distinction without strong justification strikes at the foundations of second-class mail.

Id. ¶ 5404 (footnote omitted).

The Commission repeated this language in R90-1, where it was again called upon to consider arguments by Time Warner and others that "economic considerations" should nevertheless "outweigh the public policy ones" in this regard. R90-1, Rec. Dec. ¶¶ 5274, 5276. The Commission again recognized in R90-1 that public policy must take precedence over economic considerations in view of the statutory mandate under the Postal Reorganization Act.

In rejecting the proposal presented by witness Mitchell in R90-1 to replace the flat editorial pound charge with a cents-per-pound discount for editorial matter, the Commission declared emphatically:

> We continue to find that longstanding public policies require a recommendation to maintain the current flat editorial content pound charge. … The Postal Service proposal does not provide adequately for the widespread dissemination of public information, which has concerned the Commission since [the] Postal Reorganization [Act] in 1970. … [T]he Commission has consistently interpreted §§101(a) ["obligation … to bind the Nation together"] and 3622(b)(8) [directing consideration of ECSI value] to support the public policy of widespread dissemination of public information. As the historian Kielbowicz, on behalf of ABP, testifies, the history of Congressional second-class rate setting also supports this public policy.
>
> … To diminish the encouragement of widespread dissemination of editorial matter throughout this Nation by zoning the editorial rates strikes at the balance of treatment between editorial and advertising matter in second-class rate designs.

Id. ¶¶ 5279-5280. The Commission accordingly rejected the argument that the "'justification' for a flat editorial rate to bind the Nation together in the early part of this century is no longer applicable …. in the 'Information Age' with … sophisticated telecommunications." *Id.* ¶¶ 5276, 5279.[36]

D. The Court of Appeals Has Broadly Endorsed the Commission's Approach.

The U.S. Court of Appeals specifically upheld the Commission's decision in R90-1 to maintain the flat editorial pound charge for Periodicals. *See Mail Order Association of America et al. v. United States Postal Service,* 2 F. 3d 408, 434-437 (D.C. Cir. 1993) ("*MOAA*"). Time Warner (with Dow Jones & Co.) challenged the Commission's decision, contending that (as witness Mitchell had argued before the Commission) a zoned editorial pound charge would "avoid discrimination against 'short-haul' publishers and 'cross-subsidization' of 'long-haul' publishers by short-haul ones." *Id.* at 435.[37] The Court "assume[d]" that such cross-subsidization was occurring but held that the Postal Reorganization Act did not prohibit it.[38] *Id.* The Court accordingly found that the Commission had properly framed the issue before it as a choice between "'economic' considerations on the one hand and 'public policy' considerations on the other." *Id.* at 435-36.

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[36] The Commission added that its "decision to maintain the current rate design" made it unnecessary to resolve arguments regarding "the feasibility of co-mailing and/or co-palletizing …." *Id.* ¶ 5283.

[37] Time Warner identified *itself* as a "short-haul publisher[] of large volume periodicals (such as *Time*), who bypass the need for long-haul mail transportation by using satellite transmission to print at multiple printing plants and then ["dropshipp[ing]"] the periodicals at postal facilities for short distance travel." *Id.* at 435, 436.

[38] Any degree of cost averaging necessarily involves some subsidization of above-average-cost mailers by below-average-cost mailers.

The Court of Appeals held in *MOAA* that in view of § 101(a) of the Act, it had "no basis for calling arbitrary and capricious the Commission's decision to adopt a rate structure favoring mailers who send their publications long distances." *Id.* at 437. The Court's reasoning paralleled the Commission's:

> § 101(a)'s mandate that the USPS "bind the nation together through the personal, educational, literary and business correspondence of the people" …. supports the view that the Service is entitled to enhance "widespread dissemination of information" … in the sense of increasing the *nationwide* distribution of units of information. … [I]n the 1977 rate proceeding the Commission stated that "what shifts the balance decisively against [a zoned EPC] [editorial pound charge] … is the prospect of detrimental impact upon small publications which are mailed to distant zones." … By raising the cost of sending such periodicals across the nation to potentially prohibitive levels, *a zoned EPC would interfere with long-distance transmission of information* and therefore could be viewed as inconsistent with the Congressional purpose of "binding the nation" together. That is a value that Congress favored strongly — to the point of mandating nonzoning for first-class mail.

Id. at 436-37 (first emphasis in original).

E. There Is No Basis for Complainants' Contention That Doubling the Editorial Pound Charge Could Have No Adverse Effect on the Widespread Dissemination of Information.

While witness Mitchell still refuses to accept the Court's recognition in *MOAA* that "a zoned EPC [editorial pound charge] would interfere with long-distance transmission of information," his current testimony in this regard has been thoroughly rebutted. In Appendix A to his direct testimony (Tr. 3/857-66), Mitchell concocts elaborate formulae that purport to prove that even the most costly subscribers produce a net profit for the publisher, so that the publisher would have no incentive drop those subscribers in the

face of rapidly increasing postal rates.[39] The key to Mitchell's arithmetic exercise and to his conclusion are his assumptions that publishers "promise" advertisers a certain level of circulation (T. 3/1220), and that advertising revenue is directly proportional to the number of subscribers (Tr. 3/993). These (incorrect) assumptions allow witness Mitchell to conclude that, for example, a publication with 10,000 subscribers will lose one 10,000th of its advertising revenues for every reduction in subscriber count. Witness Mitchell's assumption was not based on any experience in either the publishing or advertising industries. *See* Tr. 865, 886-89.

American Business Media witness Cavnar, however, has had very substantial publishing industry experience. *See* Tr. 1722, 1726. Witness Cavnar explained that publishers often do not promise advertisers any specific level of circulation. *See* Tr. 6/1727-1730. Indeed, that is the case with *Time* magazine's regional editions. *See* Tr. 3/1222-1226, 4/1281-83. And while some publishers may base advertising rates on a guaranteed circulation level ("rate base"), the common practice in those cases is to set a rate base comfortably short of actual circulation so that rebates to advertisers will not become necessary as circulation fluctuates. *See* Tr. 6/1727-1728, 1953. Thus, most business-to-business publishers can and at times do trim the total number of subscribers without affecting the rate paid by their advertisers, who often care as much or more about the quality of the readership for advertising purposes as they do about the level of circulation. *See* Tr. 6/1728-1731.

[39] Apart from its other flaws, this analysis begs the question of impact on the publications of nonprofit associations that carry little or no advertising. As witness Schaefer testified, "a publisher's net subscription revenue ("circ net") may be a low percentage of the subscription price to the extent that subscriptions are sold through independent sales agents, as is common for many publications." Tr. 6/1952-53.

As an example, witness Cavnar discussed his experience with the magazine *Tools of the Trade.* *See* Tr. 6/1728-1729. Further, Cavnar testified that his employer, Hanley Wood, publishes several controlled-circulation (or requester) magazines for professionals that could readily be marketed in Canada yet are not made available there only because of high postage. *See* Tr. 6/1731. Witness Cavnar observed that under Complainants proposed rate structure, which would sharply penalize small bundles and sacks, postage could become prohibitive not only distant subscribers but also to subscribers in less densely populated areas of the country. Tr. 6/1731-1732.

For these reasons, the Commission should reject witness Mitchell's theory that distant and rural subscribers will not be placed at risk by the proposed rate structure, which is at odds with Postal Service's obligation to promote the widespread dissemination of editorial content through a healthy, vibrant and diverse Periodicals class.

F. The Commission Has Continued Its Strong Commitment to the Flat Editorial Pound Charge.

In Docket No. MC95-1, the Commission reaffirmed its commitment to the uniform editorial pound charge, notwithstanding contentions that "eliminating recognition of editorial matter in rates for Periodicals" would "send[] better price signals, particularly in terms of dropshipping." MC95-1, Rec. Dec. ¶¶ 5287, 5289. As in R90-1, the Commission recognized in MC95-1 that the justification for the flat editorial pound charge is "rooted in the ECSI value of the mail involved, and policies favoring the dissemination of second-class material to bind the nation together" (¶ 5287), which reflect "long-standing national policy" — detailed in the testimony of postal historian

Richard B. Kielbowicz (who testified in MC95-1 as a Presiding Officer's witness).[40] The Commission credited the testimony of Kielbowicz:

> As summarized by Professor Kielbowicz, the first and most enduring objective of postal policy has been to bind the nation together. This policy has been implemented through flat rates for editorial content …. While historic concern for the protection of rural interests has lessened as American demographics have changed, special encouragement for the dissemination of educational, scientific, cultural and informational materials has *increased* over the years.

MC95-1, ¶ 2048 (emphasis supplied). *See also* PRC-LR-2 at 103-04.

The origin of the flat editorial pound rate traces to 1792, when Congress created the newspaper class in order to "promote the circulation of political journals by adopting a largely flat rate in contrast to steeply zoned letter postage." *Id.* at 11, 103. This was the "most striking innovation in early U.S. postal policy" (*id.* at 9), representing a "uniquely American recognition of information's role in binding the nation together." MC95-1, ¶ 3011 ("British postal regulations … did not distinguish between private correspondence and publications intended for general circulation.").

The low, flat postal rate for newspapers was extended to magazines by 1852. PRC-LR-2 at 28. "Simplifying the complex rate schedule and eliminating zones, which discouraged the long-distance circulation of publications, were the major reasons given for the new law." *Id.* Congress revisited this subject in 1917, at a time of both increasing postal deficits and growth of advertising in periodicals. *Id.* at 52. Congress sought "fundamental reform" that "calibrated a public resource — cheap postage — to the public benefits it produced." *Id.* at 54. The legislative solution was to "charge[] low

[40] The Presiding Officer in the present proceeding has filed the MC95-1 testimony of witness Kielbowicz as a library reference in this proceeding – PRC-LR-2. Citations in this brief to the testimony of Kielbowicz will be to the library reference.

postage on periodicals' reading matter and higher rates on their advertising contents, with postage for the latter rising in proportion to distance." *Id.*

> This creative solution combined three pricing theories: the flat, low rate for editorial content continued public service pricing (charge less because of its societal value); the distance component reflected cost-of-service pricing (charge more to cover transportation expenses); and the advertising differential represented value-of-service pricing (charge more for the private benefits it produced). Viewed another way, zoned advertising postage narrowed the gap between the treatment of advertising in the second and third classes.

Id. The "flat rate for periodicals' editorial content adopted in 1917 continued the commitment to bind the country through the long-distance circulation of the printed word." *Id.* at 104.

Congress has continued to embrace this "creative solution" over the years. As the Commission noted in R90-1 (¶ 5271): "As recently as 1967 Congress zoned the advertising pound charge but maintained a flat editorial pound charge in nonprofit second-class. This reaffirmed the Congressional intent to encourage widespread dissemination of editorial matter." *See also* PRC-LR-2 at 92. The same approach was adopted for classroom publications and controlled-circulation publications in 1951 and 1948, respectively. *See id.* at 72-73. Congress also adopted flat pound charges for other categories of mail having ECSI value to the recipient, including library materials in 1958 and books in 1942. *See id* at 82-85, 96.

The Commission concluded in MC95-1 (¶ 3012) that the "role of postal delivery of periodicals in binding the nation together by contributing to an informed populace has historically justified separate treatment for this mail, *and it continues to do so today*. ¶ 3012 (emphasis supplied). As recently as 1998, the Commission rejected a rate design proposal that would have substantially increased the flat editorial pound charge

because any such departure could undermine the "historical commitment (embodied in the Postal Reorganization Act) to promote the widespread dissemination of editorial content through the mail." Docket No. R97-1, Rec. Dec. ¶¶ 5783-5788 (quoting McGraw-Hill witness Hehir).

G. Promoting the Widespread Dissemination of ECSI Matter Through the Mail Remains a Valid and Important Statutory Policy.

The role of Periodicals in binding the nation together is no less vital today than in the past. By no means has the role of Periodicals been rendered obsolete by the internet, any more than it was by radio, broadcast television or cable television. Each new technology is complementary, not preemptive. Complainants assert on brief that the role of Periodicals has nevertheless been "diminished" in the sense that the role of automobiles has supposedly been diminished by airplanes. Complainants' Memorandum at 8 n. 7. But automobiles, like Periodicals, retain an obviously vital role in binding the nation together.

Complainants have certainly not proven that most of the editorial content of Periodicals can be found on the internet. Moreover, websites maintained by publishers of Periodicals are at least largely dependent, both for financial support and content, on the continued vitality of the print publications that are featured on the websites. *See* Tr. 1737 (Cavnar), 6/1952 (Schaefer). More importantly still, most subscribers to Periodicals do not and would not look to the internet as an adequate substitute for hard-copy Periodicals. *See* Tr. 6/1951 (Schaefer); 1738 (Cavnar). Indeed, many subscribers do not even own a computer. If Time Warner truly believed that computer-delivered products were good substitutes for hard copy print products for most

subscribers, it could probably save $100 million per year by terminating the printing and mailing of *Time* magazine alone. Tr. 6/1939 (Cavnar). Time Warner, of course, knows better, as does the Commission.

The confused testimony by witness Gordon provides no basis for any retreat from the longstanding national policy of promoting the widespread dissemination of Periodicals in order to help bind the nation together. Gordon acknowledged that notwithstanding the internet, the "educational, cultural, scientific, and informational value that periodical publications provide today is no less than … in 1976." Tr. 3/700. It follows that it is no less important today than in 1976 to promote the widespread dissemination of such publications in order to help bind the nation together. Yet Gordon appeared to disagree with that national policy (Tr. 3/715), which is codified in the Postal Reorganization Act. While witness Gordon did not appreciate the continuing significance of preferential Periodicals postal rates in binding the nation together, he admittedly lacked knowledge of the role played by such rates in the viability of start-up magazines and the economics of small-circulation magazines that are national in scope. Tr. 3/739.

Complainants cannot have it both ways. As the Commission declared in MC95-1 (¶ 3012): "The role of postal delivery of Periodicals in binding the nation together by contributing to an informed populace has historically justified separate treatment for this mail, and it continues to do so today." To embrace any implications to the contrary in Gordon's testimony would be to attack the very foundations of the Periodicals class. We do not expect Complainants to do so, much less the Commission. Because Periodicals plainly do continue to play an important role in binding the nation together, it

remains no less important to maintain the longstanding national policy of fostering the widespread dissemination of diverse Periodicals through the flat editorial pound charge.

CONCLUSION

For all of the foregoing reasons, the Commission should not recommend adoption of the rate structure proposed by Complainants in this proceeding.

/s/

Timothy W. Bergin
Hall, Estill, Hardwick, Gable
Golden & Nelson, P.C.
1120 20th Street, N.W.
Suite 700 North Building
Washington, D.C. 20036-34006
(202) 973-1224

Attorney for The
McGraw-Hill Companies, Inc.

/s/

David R. Straus
Thompson Coburn LLP
1909 K Street, N.W.
Washington, D.C. 20006-1167
(202) 585-6921

Attorney for American Business Media