Postal Rate Commission
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BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON DC 20268-0001

COMPLAINT OF TIME WARNER INC. ET AL.
CONCERNING PERIODICALS RATES

Docket No. C2004-1

Initial Brief of the American Postal Workers Union, AFL-CIO

American Postal Workers Union, AFL-CIO

By its attorneys:

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I. Introduction and Procedural History

On January 12, 2004 Time Warner, Conde Naste Publications (a division of Advanced Magazine Publishers Inc.), Newsweek Inc., Reader's Digest, and TV Guide Magazine Group filed a Complaint which it claimed "concerns fundamental reform of the Periodicals rate structure" in the interest of achieving greater conformity with statutory ratemaking provisions and requesting that the Commission:

1) establish a docket to investigate the conformity of Periodicals Outside County rates with the policies of the Postal Reorganization Act of 1970;

2) conduct proceedings in conformity with section 3624 of the Act, including full hearing on the record; and

3) issue a decision recommending to the Governors of the Postal Service adoption of the alternative Periodicals rate schedule proposed by the complainants, or one that follows similar principles of cost-based rate design.

The Commission transmitted the complaint to the Postal Service and on February 11, 2004 the Postal Service Answer urged the Commission not to treat with the Complaint. APWU in a February 13th letter urged the Commission not to accept this case. The Commission accepted the case and opened a proceeding on March 26, 2004. The Commission stated that should it find merit in this Complaint, the Commission would issue a recommended decision on classification changes under section 3623 and would not make a rate recommendation. Over the ensuing nine months an impressive record of evidence and testimony has been compiled.

APWU remains convinced that it was unwise to take the case and the Commission should not recommend any classification changes to the Postal Service.

II. THE COMPLAINT PROPOSES A RADICAL DEPARTURE FROM THE CURRENT METHODOLOGY FOR DETERMINING RATES

The Complainants want to deaverage the costs associated with the "less efficient" mailers from those of the "efficient mailers." Mr. Mitchell states "They [the proposed rates] would reduce cost averaging across the subclass and increase the alignment of the rates of individual mailers with the underlying Postal Service costs…" [at p 6 lines 14-16]. Mr. O'Brien accuses "less efficient" mailers ". . . of attempting to hold onto a favorable postage rate through the use of cost averaging . . ." (TW et al T-1, p 18 18-24). To deaverage costs the Complainants would change the flat-rate for editorial content to a zoned rate for editorial content. The concept of a flat rate for editorial content has been in existence since 1917. The Complainants would move from a system that determined periodical rates based on per piece and per pound charges, to rates based in part on additional charges for bundles, sacks and pallets. (There is currently a small discount for palletizing but it is on a per piece basis, not on a per pallet basis). The Complaints argue for a completely different system for periodicals rates than the one currently in use.

Cost averaging is used in every class of mail. Any decision to reduce cost averaging in the periodicals classification has wider implications for rate setting. There has always been a sharing of costs between small mailers (with potentially high handling cost pieces) and larger business mailers (with more low handling cost pieces). The Commission has permitted a variety of discounts for mailer activities that reduce Postal Service costs. Such discounts have been measured from a "benchmark." The "benchmark" preserves much of the pre-discount cost sharing and averaging, so that the new discount does not result in a shifting of costs with an immediate higher rate to non-discount mailers. The Complainants would break away from such methods.

The Complainants argue that their rate structure would incentivise more efficient mailing practices. They argue that mailers could lower costs by becoming more efficient or could pay a rate more appropriate to Postal Service costs for handling their costly mailing practices. The Commission ought to be wary about the Complainants' proposal. The Postal Service and other periodical mailers are chief opponents. The Service and non-complainant periodical mailers have every reason to want to reduce costs and the record shows they are working on various programs to reduce costs.

III. PROPOSED STRUCTURE HAS POTENTIAL OF COST SHIFTING: RAISING RATES FOR MANY SMALLER MAILERS WHILE LOWERING COST FOR MANY LARGER MAILERS

The Complainants made available a program for any mailer to calculate before and after periodical rates under their proposed rates. APWU obtained the program and ran our rates for the most recent mailing of the APWU Postal Worker. APWU would pay higher rates under the Complainants' proposed rates. So we asked Complainants to

explain the program results and tell APWU how to lower its costs. The Complainants responded

> . . . It appears that you are heavily palletized already. It might be that further increases would require co-palletizing or co-mailing, options some printers can offer. . . (Responses of Witness Mitchell to APWU/TW et al.-T1-3, part 3.B, p2)
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> and
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> . . . I understand that ties with printers are important and that there is often a preference to avoid disruption. Nevertheless, it is a fact that a widely distributed publication will have a lower average haul if mailed from a central location. Perhaps more important, however, is what the printer is able to offer in the way of coordinating with other mailings. . . (Responses of Witness Mitchell to APWU/TW et al.-T1-3, part 3.C, p2)

It appears that even though APWU has palletized, the complainants would have APWU print and mail at a distant location (central USA) and seek a printer/mailer that can offer to co-mingle APWU's periodicals with other mailings - just to keep our rates from rising. The record clearly shows that co-mailing and co-palletizing remedies touted are not available to all the periodicals mailers and may be particularly unavailable to small mailers[1]. It is one thing to tell APWU that it must pay more because APWU does not want to bypass the postal and private sector union drivers that haul mail, but quite another to say that APWU must pay more because APWU can't find a printer/mailer able or willing to co-mail and co-palletize the *APWU Postal Worker*.

The Complainants seek periodical rates that help them lower their costs - in part by shifting additional burden for the inefficiencies inevitable with universal service to mailers that cannot duplicate the Complainants mailing practices. There are other ways to promote "efficient" mailing practices that do not raise rates for small mailers. With a universal service we will have small mailers without the resources to provide low cost pieces to the Postal Service. Nonetheless, they are entitled to mail at reasonable rates. The Commission ought to consider long and hard before introducing a classification structure would imput higher raises rates for small mailers while lowering rates for many of the larger mailers.

The record here does not provide the Commission with a good understanding of the potential impact of the complainants' proposal on truly small mailers. Commissioner Goldway highlighted the problem: "So we have 84 percent of the periodicals publications which are not being represented in this room when we discuss them . . .

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[1] See Cavnar, ABM-T-1, p. 2 lines 18-20; p. 4 lines 8-15; p. 4 lines 20-23 through p. 5 lines 1-2; see Mitchell, APWU/TW et al. T-1-3D, and 3F; and O'Brien at TR 5 p. 1494 lines 13-18 and 1499, lines 4-11.

some of these small publications have some national representation if they are nonprofit, regional publications, that most of their content is going to be editorial?" Mr. O'Brien responds yes and Commissioner Goldway continues "And that means that in a zoned rate they are going to get a higher percentage of rate increase because most of their content is editorial, and whatever savings they might or might not be able to garner from cost-efficient pricing, and there is a debate about whether small publications over 15,000 can do that, can't you see that their rates are going to go up disproportionately to other because of that?" (Trans 5, pp. 1521-1522)

IV. THE COMPLAINT PROCEDURE IS NOT THE VEHICLE TO INTRODUCE RADICAL CHANGES

As APWU noted in Mr. Burrus' February 13, 2004 letter, if the Commission makes recommendations favorable to the Complainants, the Commission will set a precedent that could multiply and complicate rate proceedings in the future. As many stakeholders in rate matters have observed, rate procedures may need to be made more flexible so rates can be adjusted more frequently. But a major reason for those recommendations is that rate increases should be made more predictable. No one has advocated making the rate procedure a free-for-all.

The Complainants do not allege that the current rates are illegal. Whether there are better ways to set rates – and a possible set of rates that are more consistent with rate setting criteria or fairer to all concerned is a matter for a future omnibus rate case. Surely, the record does not show that the Complainants proposal is without problems and inequities. The Commission should not have imposed upon interested parties the considerable expenditure of resources needed to participate in this complaint procedure and should do nothing that will invite more attempts to use the Complaint procedure as a substitute for mail classification and rate cases.

APWU believes the Commission violated in its own rules in accepting this complaint and should not now do more harm.

V. CONCLUSIONS

It is inappropriate to impose the kind of periodical classification requested by the Complainants for several reasons:

1) The Complaint procedure is the wrong vehicle and any result would likely be challenged and will be revisited in the next omnibus rate case.

2) The Complainants' proposal would raise rates for smaller mailers. There is no

evidence in the record assuming that these mailers - no matter how willing - would be able to introduce sufficient “efficiencies” to prevent a rise in rates. To the contrary the evidence strongly indicates that introducing the “efficiencies” necessary to take advantage of the proposed new rate structure would be impractical and costly.

3) The record shows that the Postal Service is working with periodical mailers to hold down rates and improve efficiencies. Unlike the Complainants, the Postal Service has shown a concern for all periodical mailers in its deliberations. The Commission should encourage that process.

The Commission should not recommend any periodical classification changes. At most the Commission should share with the Postal Service any insight the Commission has gained and thinks would assist the Service in its attempts to address periodical service and costs.

Respectfully submitted,

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CERTIFICATION

I hereby certify that I have this date served the foregoing document in accordance with the rules of practice

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