

BEFORE THE
POSTAL RATE COMMISSION
Washington, DC 20268-0001

Complaint of Time Warner et al.)
Concerning Periodicals Rates)

Docket No. C2004-1

INITIAL BRIEF OF
THE NATIONAL NEWSPAPER ASSOCIATION, INC.

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Table of Contents

I.	Introduction.....	4
II.	The impact of the proposed rate schedule would primarily affect publications that are simply preparing their mail so that the Postal Service can achieve the service it is offering to sell.....	6
	A. Mailers do what they do because of the Postal Service’s practices, not because of stubbornness or intractability.....	6
	B. Most of this case is about magazines.	9
	i. Newspapers do not have the same flexibility that even some small magazine titles may have to avoid the consequences of the service problem	10
	ii. The opportunities created by the Periodicals Operations Review Team did not include NNA’s newspapers.....	11
	iii. Newspapers face a unique and heavy impact under the proposed rates.	12
III.	Complaint cases should not be used as an avenue for mailers to change other businesses’ rates.	
	A. The Commission has been here before, in the Red Tag case, among others.	14
	B. Complainants admittedly appear to be in line for a windfall, but the important thing is what the rates would do to the mailstream.	16
IV.	Binding the nation together is not just an old-fashioned notion.....	17
V.	There cannot be a penalty for sacks until a meaningful alternative exists.	19

VI. Conclusion.....20

1 **I. Introduction**
2

3 If the Commission envisions a periodicals mailstream of the future that has
4 lost its small, independent and special-interest publications, and instead is a
5 Walmart-ized collection of widely variant titles all published by a small
6 concentration of owners, it should recommend the rates recommended by Time-
7 Warner et.al.
8

9 USPS rebuttal witness Tang’s testimony realizes what is at stake. The
10 “cost-based rates” that the proponents in this case are urging upon the
11 Commission would force many small publications to make stark and equally
12 unwelcome choices. Either they could jettison local and regional printers they
13 presumably are using today and find large national printers to amass their mail
14 into greater and more “efficient” volumes on pallets or in co-mailings. Or they
15 could stuff all of their mail into a few large sacks and pray the Postal Service
16 delivered their issues quickly enough that all of their subscribers would not
17 cancel in anger.
18

19 If they cannot succeed in either choice, they are out of business.
20

21 National Newspaper Association obviously opposes this complaint. Like
22 intervenor McGraw-Hill, NNA has some publications within its membership that
23 most likely would benefit from this version of “cost-based rates.” NNA’s
24 opposition is not to improvements in the periodicals mailstream, nor to the idea
25 that proper price signals can drive positive behavior. NNA has long supported
26 worksharing, and has worked within its own industry to improve mailer
27 sophistication.
28

29 Rather, NNA opposes the complaint because it believes 1) large mailers
30 like the five complainants ought not to be able to jump start a rate case at all, let
31 alone one that potentially forces the smaller mailers out of the mail; and 2) it

1 believes there is a fundamental unfairness in punishing mailers for behavior they
2 have been compelled to adopt because of the Postal Service's inability to do
3 what it says it will do.

4
5 Furthermore, NNA resists--as the Commission should--the notion that
6 these "cost-based rates" are the keys to the kingdom of a better Postal Service.
7 Rates are already cost-based. The Postal Reorganization Act requires it. But it
8 wisely also mandates consideration of other driving forces in the rate schedules.
9 The Act and long Commission policy recognize that periodicals have a larger role
10 to play than simply to provide efficient mail volume for the Postal Service.

11
12 In the context of this complaint, "cost-based rates" are simply a further
13 unbundling and a de-averaging of one of the Postal Service's most important
14 mail classes. The proposed rate schedule is designed to allow large mailers to
15 free themselves of some of the problems the Postal Service seemingly cannot
16 solve, while leaving the smaller mailers to shoulder the load alone because they
17 have no meaningful means of escape. The case is the architect for a
18 homogenized periodicals mailstream dominated by a concentration of ownership
19 in both publishing and printing. It favors a periodicals mailstream devoid of the
20 color, content and vibrancy and of the variety of viewpoints and quirkiness of
21 interests that bring people to the mailbox. .

22
23 NNA believes the Commission may have been right to let this case
24 develop an evidentiary record, as it develops some information that may
25 enlighten all the mailers involved. But in the end, it should reject this complaint.
26 Intervenors show that progress has already been made in improving mail
27 efficiency. As NNA's testimony shows, there is even now some progress in
28 newspaper mail with the introduction of tubs as potential alternative containers,
29 but it is premature to rely upon their development.

30

1 NNA urges the Commission to use this case to point to opportunities for
2 the Postal Service to design rates that will urge mailers to use its services wisely,
3 but to create incentives, not penalties, where realistic choices are available.
4 Where the Postal Service is unwilling or unable to develop realistic choices, there
5 should be no penalty for a mailer's failure to use them.

6
7 **II. The impact of the proposed rate schedule would primarily affect**
8 **publications that are simply preparing their mail so that the Postal**
9 **Service can achieve the service it is offering to sell.**

10
11 ***A. Mailers do what they do because of the Postal Service's***
12 ***practices, not because of stubbornness or intractability.***

13
14
15 Small periodicals mailers, particularly newspapers, are not pleading for
16 sympathy, as complainants' allege. Tr. 5/7. They are arguing that they should not
17 be penalized for problems not of their own making.

18
19 Much of the disagreement with newspaper mail is about sacks, as
20 complainants' questions to NNA demonstrate. Tr. 6/2043-2049, 2052-58. If
21 publishers would use pallets, co-mail or co-palletize and stop creating so many
22 sacks, costs would be driven out of the system, and complainants' rates would
23 improve, say the complainants. See, for example, the Direct Testimony of
24 Robert W. Mitchell, TW et al.-T-1 at Tr.3/800.

25
26 NNA does not have sufficient knowledge of magazines and newsletters in
27 the mailstream to address their abilities to adapt to these rates. It infers from
28 American Business Media's cross-examination of T-W et al. witness Schick that
29 the evident absence of co-palletization and co-mailing capabilities in smaller and
30 regional printers would obviously force many small publications into using the few
31 larger companies that could afford the investment in infrastructure to create these

1 programs. But those companies seem to compete only with one another on
2 price, and not with the smaller and regional printers that may otherwise have
3 been less costly printers for the smaller publications. See for example ABM's
4 discussion of printer availability at Tr. 2/404-408, 410, 414, 433, 440 and 505-
5 510. No party has endeavored to explain whether the most vulnerable of small
6 titles in the mailstream could afford to make such shifts and still survive.

7
8 NNA addresses only impact upon newspapers, about which systemic
9 evidence is sparse and hard to collect, as the Postal Service doesn't study them,
10 and NNA's ability to collect data is limited by resources. What NNA offers is what
11 it is able to provide to enlighten the record, Tr. 6/2071, including its response to
12 the Commission's Notice of Inquiry, No. 1, to which responses are not yet
13 incorporated into the record.

14
15 NNA has concluded that newspapers are not able to do what
16 complainants want them to do, price signal or no price signal—unless they simply
17 eliminate some of their mail. Tr.6/2072-2073.

18
19 NNA witnesses Heath and Crews explain why the use of sacks has been
20 so intractable, and the reason is not purely stubbornness or a fondness for the
21 days of buggy whips. Newspapers use sacks because they have been the only
22 officially-permitted containers for this type of mail. Tr. 6/2064. Newspapers
23 cannot use pallets for small mail volumes. And they cannot combine copies with
24 those of another newspaper at a central plant. Tr.6/2028. Sacks are the only
25 available option.

26
27 Why do they use small volume sacks? Because they must.

28
29 Heath has testified repeatedly on the challenges of getting mail delivered
30 to readers on time, Tr. 6/2066-7. Newspapers have long complained about slow
31 and uneven delivery, and of mail arriving at subscribers' mailboxes in clumps.

1 Even witness Stralberg said he had received periodicals issues out of order of
2 their publication dates, Tr. 1/270. Service has not improved in Heath's time. Tr.
3 6/2065-2066. In fact, changes in required sortation made service worse,
4 particularly when the ADC and mixed ADC sorting were created in the mid 1990s
5 and the SCF sacks were no longer permitted. Tr.6/2065.

6
7 So publishers were forced to adapt, often on the advice of a local
8 postmaster, Tr.6/2067. They began to sack mail in ways designed to move
9 copies as directly to DDU or destination SCFs as possible so there would be the
10 least opportunity for delay, as witness Stralberg recognizes. Tr. 1/ 267 – 8. Their
11 quest was not premium service but simply the service that USPS said it was
12 offering at the periodicals rates. Tr.6/6028.

13
14 Time Warner witnesses dispute that the odds of on-time service are
15 improved by creating sacks in this way. Stralberg says there is no firm evidence
16 that skin sacks lead to faster delivery, but there is also no firm evidence that it
17 does not, and the widespread use of them would indicate mailers believe
18 otherwise. Tr. 5/1541. And witness O'Brien thinks there may be valid service
19 reasons for small volume sacks. He hints that he believes more direct sacking
20 improves the chances on on-time service. Tr 5/1494.

21
22 Even complainant party Newsweek, after making a concerted effort to use
23 fewer sacks admits that its sack count has seen only a "slight decrease." One
24 must assume it does not create sacks because it happens to have a great many
25 lying around, but because its mail preparers believe the sacks are connected to
26 getting a timely weekly newsmagazine into the subscriber's household before the
27 news is stale. (Oddly, it alone among heavy sack users seems to want the Postal
28 Service to raise its prices so it will be compelled to make more progress.)

29
30 T-W Witness Mitchell also acknowledges that publishers using larger
31 numbers of sacks believe they are doing so for service. Tr.3/1243. He recognizes

1 that there have been a litany of complaints about service. Tr.3/1246-47. He
2 thinks that if standards are not being met, the system should be fixed, and that if
3 publishers want mail handled a certain way, publishers should get that service—
4 but he doesn't say which economic signal might be effective when the signal
5 being sent is to the customer, not the service provider who is presenting the
6 problem Tr. 3/1245.

7

8 Mitchell doesn't want the publisher to make skin sacks to solve the
9 problem if it means the cost is absorbed by the class. But he also sees that the
10 publisher has no meaningful way of paying for that cost if a sack charge is added
11 to the rate schedule. He sees that the publisher cannot require other readers or
12 advertisers to subsidize mail to the subscribers whose mail is in those small
13 volume sacks.Tr.3/1250-51. The only alternative is to pass the cost along to the
14 distant subscriber. The cost could be more than \$3 per sack under the proposed
15 rates. Tr.6/2031. The reader is not likely to appreciate such a charge for mail that
16 the Postal Service cannot otherwise deliver on time, and therefore is likely to
17 abandon the publication. Tr. 6/2033.

18

19 T-W mailers would say that neither is it fair for them to have to pay for this
20 failure of service when they are taking other measures to avoid it themselves. But
21 all they can demonstrate is that the Postal Service has so far designed viable
22 ways for large mailers to escape the problem, while the paths available for
23 smaller mailers are still far from workable. Tr. 6/1777. In fact, most of the
24 solutions available to the large mailers are not even about NNA members'
25 newspaper mail—they are about magazines.

26

27

B. Most of this case is about magazines.

28

29 Complainants' witnesses are all magazine experts—publishers, printers,
30 consultants familiar with the world of magazine periodicals. It would be a major

1 mistake for the Commission to assume that much of what it has heard in this
2 case is about newspapers.

3
4 **i. Newspapers do not have the same flexibility that**
5 **even some small magazine titles may have to**
6 **avoid the consequences of the service problem.**
7

8 Complainants insist that publishers have the ability to stop the behavior
9 that they believe is driving cost into the periodicals stream.

10
11 Witness O'Brien says:

12 "You can change your mailing behavior. You can co-mail.
13 You can co-palletize. You can drop ship. You can use
14 selective binding. You can improve your back dates. There
15 are a lot of things to be done." Tr. 5/1505.
16

17 But small publications cannot be palletized, not even Time Warner's own
18 Ride BMX, Tr. 1 p. 214, and certainly not most newspapers, whose local postal
19 facilities may not even be able to handle a pallet, should a newspaper try to use
20 one. Tr.6/2057-8. And although O'Brien suggests that changing mailer practices
21 is as simple as changing software with new rates, Tr.5/19, he ignores Heath's
22 explanation of the difficulties of obtaining software that prepares mail to pallets—
23 which can be costly. Tr. 6/2069.
24

25 Heath makes it clear that none of the options offered by complainants are
26 available for newspapers. Tr.6/2068-2069. O'Brien responds that they have the
27 ability to set the parameters that determine sack sizes, Tr.5/1517, and that is
28 true. But he has no assurance to offer that the copies in those larger sacks will
29 reach the readers when they are supposed to arrive, or even close to the right
30 time.
31

1 that complainants have in mind, and the impact upon them falls heavily indeed as
2 witness Stralberg notes in his rebuttal testimony. Tr.5/1542. Presumably
3 complainants would say the Postal Service's decision to design the AFSM 100
4 machines so that they could not handle the newspaper mail that was already in
5 the mailstream is the mailers' fault as well, and that a premium price should be
6 paid for the newspapers' stubborn refusal to transform themselves into different
7 sizes, shapes and materials to suit the Postal Service's automation plan. But the
8 development of this millennium's sorting technology without consideration of
9 newspaper sorting is another large world element over which NNA had no
10 control.

11
12 **iii. Newspapers face a unique and heavy impact**
13 **under the proposed rates.**

14 If newspapers cannot change their practices, they may face large
15 increases, witness Stralberg admits. Tr. 1/301. And the record shows that
16 changing their practices is unlikely unless the Postal Service makes changes
17 first.

18
19 NNA witness Crews examines the impact upon several Missouri
20 newspapers that he considers fairly typical of small newspapers that use the mail
21 to reach readers. He cites the *Cameron Citizen Observer*, a newspaper
22 spanning four counties, that uses the Outside County periodicals rate for delivery
23 to its primary market, as well as to distant readers that it considers important to
24 its mission. He explores the options this newspaper would have for distribution
25 of its outside county copies if the complainants' rates were in effect.

26
27 It cannot palletize its mail. Tr.6/2028, lines 16-19

28 Or combine its copies with those of another publication at a central
29 printing plant. Tr.6/2028, lines 20-22.

30 It has been offered no alternative to sacks by the Postal Service,
31 Tr.6/2028, lines 27-28.

1 It cannot drop its distant readers, particularly because many of them live
2 within the local market part of the year. Tr.6/2029, lines 13-28.

3 It does not have an out of town subscription rate for most of its readers,
4 and would consider instituting one anathema to its goal of keeping its
5 circulation base stable. Tr.6/2030, lines 22-28.

6

7 The publisher considers the small volume sacks essential to achieving the
8 expected service standards. Tr.6/2006.

9

10 Whether the expectation of promised service is realistic or not as a result
11 of the sacking practices may be subject to debate, but this publisher set up the
12 sacking practice to achieve the most direct processing possible. Tr. 6/2020.

13 Stralberg points out that its mixed ADC sacks probably are all worked at the
14 origin plant together, Tr. 5/1559, and this particular publisher's assumption may
15 be wrong—in this case. But the anecdote doesn't deny the reality of many
16 publishers who have built their sacking practices over the years, usually on the
17 advice of Postal Service operations managers, to achieve direct transportation
18 and downstream processing for service purposes. Tr.6/2067.

19

20 Stralberg disagrees with Crews's impact concerns. But he compares the
21 *Cameron Observer*, with long-distance subscribers in sacks, to the *Atchison Mail*,
22 which has been allowed to use tubs. Tr. 5/1561. The example is anecdotal and
23 also irrelevant to the point. Tubs are not available for widespread use in the
24 system to date.

25

26 Witness McGarvy asserts it would be a huge mistake to assume
27 publishers have the abilities to change as O'Brien so fervently believes.
28 Tr.6/1780. It is simply not possible for many small publishers to adapt to the rate
29 grid without losing business. Tr.6/1782. It isn't a matter of stubbornness. It is a
30 matter of the Postal Service's being unable to provide the service it promises

1 without mailers' additional work to push pieces as far into the mailstream without
2 having a sack opened as possible.

3
4 Whether or not complainants believe the small volume sacking practice
5 really does work for achieving promised service or not, it is a given that the
6 mailers are the ones with the daily, weekly and monthly obligation to get their
7 products to subscribers, and who have the experience to know what works and
8 what does not. Tr.6/1753. It makes sense to lend some credence to their beliefs.
9 Until meaningful alternatives that achieve necessary service levels are
10 developed, attaching a price penalty to the mailers' only viable means of using
11 the system and staying in business is unfair to the mailers, and punitive to the
12 mailstream as well as the owners of the mail.

13
14
15 **III. Complaint cases should not be used as an avenue for mailers to**
16 **change other businesses' rates.**

17
18 **A. The Commission has been here before, in the Red Tag**
19 **case, among others.**

20
21 The Postal Service has already objected to the use of the complaint
22 process to initiate rate examinations. It cites Dow Jones v. United States Postal
23 Service, 268 F.2nd 786,790 (DC Cir. 1981) as authority that only the Postal
24 Service can bring a rate case.

25
26 This is not the first time unhappiness with a set of rates has led the
27 Commission into a proceeding designed to change them without the bother of a
28 USPS-initiated rate case. The case is somewhat reminiscent of the Red Tag
29 case of 1981.

1 Although that case began as a Commission initiated classification case, it
2 similarly involved a disagreement among mailers within the periodicals class. In
3 that case, periodicals that did not require preferential treatment, known as “red
4 tag” service, believed their costs were too high. They sought a 1.1 cent reduction
5 in their rate, that would be offset by an increase of 1.2 cents for the red tag
6 mailers. The Postal Service opposed the rearrangement of rates. The
7 Commission’s decision was reversed by the Court of Appeals for the DC Circuit.
8 Dow Jones and Co v. United States Postal Service, 656 F.2d 786 (D.C. Cir.
9 1981) The court admonished the Commission to be cautious in the use of its
10 classification powers, not to intrude into the rate arena of USPS. It quoted its
11 own earlier decision in Ass'n of American Publishers, Inc. v. Governors of the
12 USPS, 157 U.S.App.D.C. 397, 408, 485 F.2d 768, 779 (1973):

13
14
15 Postal Service staff is in a unique position. It alone takes in the full scope
16 of Postal Service operations when presenting its proposals. And it alone is
17 in a position to influence the Postal Service's day-to-day accounting
18 procedures and record keeping. Congress meant the Postal Service to
19 structure its own process for preparing such (rate) proposals so that there
20 would be at least a rough correspondence between the amount of money
21 it would discretionarily allocate and the care with which it prepared and
22 supported those proposals.
23

24 The case is also reminiscent of the reclassification case of 1995, in which
25 many of the same publications represented by the complainants in this docket
26 argued for a de-averaging and unbundling of rates so that they could liberate
27 themselves from the costs of service of USPS and leave smaller titles to pay.
28 See Opinion and Recommended Decision of the Postal Rate Commission,
29 Docket MC95-1, Mail Classification Schedule 1995, Classification Reform 1, at 3.
30 That case led to some unbundling and de-averaging that ironically created some
31 of the problems smaller mailers deal with today but the Commission wisely
32 declined to take the path the larger publications hoped for, and instead gave the
33 mailstream some breathing room to develop such new practices as the

1 copalletizations that arose in later dockets. See Docket No. MC 95-1, V-54 et
2 seq.

3
4 **B. Complainants admittedly appear to be in line for a windfall,**
5 **but the important thing is what the rates would do to the**
6 **mailstream.**

7
8 The Commissioners recognized that they have very little data on the
9 record about the impact of the proposal upon 84% of titles in the periodicals
10 mailstream, and they engaged in a colloquy about sources for those data. Tr.
11 5/1521-1530. NNA has supplied information in response to the Commission's
12 Notice of Inquiry, but that information is sparse and not yet on the record of the
13 proceeding. The fact is that by their very size, the mailstream's smaller
14 stakeholders are not in a very good position to provide anything but anecdotal
15 data—and it may be precisely why they become invisible or insignificant to well-
16 intended postal experts like witnesses O'Brien and Stralberg.

17
18 Demonstrating the disproportionate impact upon smaller publications was
19 the purpose of USPS Rebuttal witness Tang's testimony. She examined a
20 sample of periodicals and determined that the proposed changes might not affect
21 mail volume much, but could have a huge effect upon the use of the mail by
22 periodicals. It was her testimony that proved that the small publications may be
23 only 12 percent of the mail subclass's volume, but would constitute 84 percent of
24 the titles. As many as 20,000 publications could be negatively impacted by the
25 rates, she testified. Tr.6/2231.

26
27 It is understandable that complainants would prefer a different set of rates
28 if witness McGarvy's testimony is even close to true. She predicts one of the
29 parties could stand to gain more than \$23 million in savings, Tr.6/1786, if the
30 proposed rates were in effect. As McGraw Hill witness Schaefer notes, large
31 publications do benefit from the complainants' rates, even as the smaller ones

1 within the same companies are adversely affected. Tr.6/1924. That is surely
2 enough to justify the considerable expense of this case for complainants. ¹ They
3 may be simply naïve about the consequences to other occupants of the
4 mailstream.

5
6 It is easy for Stralberg to say these small publications could simply stop
7 doing what they do, and even if they go out of business, their demise at least
8 saves his client money. Tr. 5/1549. He questions the extent of impact, but he has
9 no information to show that they would, indeed, survive. One might assume if
10 they thought they would, American Business Media, representing small
11 periodicals, would not have been sent into the battle for some of them in this
12 docket.

13
14 **IV. *Binding the nation together is not just an old-fashioned notion.***

15
16 One of the greatest absurdities in the case is the testimony of witness
17 Gordon. His apparent disdain for periodicals mail made for a peculiar
18 appearance when presented by some of the largest publishers of periodicals in
19 the world.

20
21 Gordon's apparent intent was to provide the Commission comfort that if
22 the small publications did go out of business, the world would not come to an
23 end. There is always, after all, the Internet.

24
25 Gordon doesn't squarely address what happens if small periodicals could
26 not survive the hearty new price signals that would force them to cease to design
27 their mail for timely delivery. Tr. 3/715. He doesn't know what role postage plays
28 in the small publications, Tr.3/739, so one can only conclude he considers the
29 publications themselves unimportant. Presumably, he didn't look at periodicals at

¹ By inviting such complaints, however, the commission also compels much smaller parties like NNA to mount a costly defense, outside the already costly omnibus rate cycle, in order to provide the Commission with a meaningful record. Many small parties have fallen by the wayside over the years. Tr.6/2074.

1 all outside the scope of the large publications he represents. He simply assumes
2 that whatever he personally wants to know will appear on the Internet. Tr.3/716.

3
4 Yet oddly he seems to assume that the reliability of information on the
5 Internet depends upon a reliable print publication's own website being available
6 there. Tr. 3/737. If the publication itself ceases to exist, he cannot demonstrate
7 that the website flowing from it would continue—and it is folly to think that it
8 would. He is concerned about an overconcentration of media ownership, Tr. 3/
9 757. but seems unconcerned that his testimony would affect the smaller
10 publications that help to stave off such a force.

11
12 Furthermore, he has a touching naiveté about the economics in
13 publications' Internet websites for one who has written extensively on business
14 and markets. Tr. 3/611, 612, 746. He recognizes that advertising support is
15 critical, and that ad-zapping is a phenomenon of the new technologies. Tr. 3/
16 753-54. He understands that factual information costs more than opinions, Tr. 3/
17 749. But he doesn't appear to understand that if advertising isn't available, the
18 factual information he expects to see on the web is likely to come crashing down
19 if the underlying publication cannot support it.

20
21 He offers a faint hope of the Internet's viability as an alternative to the
22 mailstream by citing a publication that says if it cannot support its printed product,
23 it will continue in another format, such as a newsletter or Website, Tr.5/18, but
24 that single example is not only a hard to find anecdote—that publisher evidently
25 hasn't yet tried survival in the Internet only world and who knows if he would be
26 successful in that migration?

27
28 Finally, he seems to lack a firm idea of how different parts of the
29 American population would be affected if information were available only on the
30 web. Tr. 3/ 744-45, but recognizes that nearly a third of the population is not
31 online, Tr.3/784, and offers no evidence they ever will be, despite Gordon's belief

1 in rapid growth. He wants to believe that if publications ceased to exist in hard
2 copy, it would be because of printing cost, and that the information would migrate
3 to the web where he could still find it. Tr. 3/761. In fact, Gordon says over and
4 over that isn't the publication that is important, it is the information, but he has no
5 idea how the information gets there. Tr. 3/762.²

6
7 What would happen to weekly newspapers in the mail under the proposal
8 was a question beneath his notice. Until he was prompted by Commissioner
9 Hammond. Tr.3/758-59, he wasn't even sure he considered weekly newspapers
10 to be newspapers. Tr. 3/742. He has never subscribed to one, and knows
11 nothing about them, including whether they have websites or are replaceable by
12 electronic means. Tr.3/743. His testimony as proof that newspapers could
13 disappear from the mailstream without harm to the information available to the
14 public, or even historians like himself, is worth about as much effort as he put into
15 it—none.

16
17 **V. There cannot be a penalty for sacks until a meaningful alternative**
18 **exists.**

19
20 Complainants sniff at the intervenors' concerns about grave and negative
21 impact from the proposed rates, but acknowledge that in many cases, viable
22 alternatives to sacks are not yet available. Yet they do not consider the fears
23 meaningful because no publisher has performed a ritual sacrifice on the witness
24 stand.

25
26 O'Brien wants the commission to insist that a business broadcast its
27 imminent demise—no doubt creating a self-fulfilling prophecy—before the

² Complainants' witness Mitchell is at least more candid. He knows not everything is on the Internet, and he admits that he goes out of his way to avoid the ads that may bear the cost of creating the information he does want to read. Tr. 3/1255-56.

1 commission takes seriously small publications concerns about impact.
2 Tr.5/1451. Witness McGarvy explains one reason why such evidence is not
3 prominent on the record, despite several witnesses' testimony outlining the
4 nature of the threat even if they cannot quantify its magnitude. Tr.6/1766.It
5 should be obvious that defense of this complaint is itself a major cost, and that
6 small publications that are represented here would not be before the Commission
7 attempting to defend themselves if they did not fear the impact of the
8 complainants' new rates. O'Brien even admits that all publications are dealing
9 with rising costs in other areas, such as paper and fuel. Tr. 5/1453. A massive hit
10 on their postal costs would create unpredictable results—and nothing on the
11 record says otherwise.
12

13 For newspapers, tubs may be the answer. The use of tubs has helped one
14 of the Missouri newspapers cited in the Crews testimony, but the use is available
15 only within nearby zones. Tr. 6/2033-34.
16

17 Witness Heath has worked for years to create alternatives to sacks, and
18 has even been involved in encouraging experiments with plastic tubs, and even
19 with dropping of bundles directly upon local loading docks—eliminating
20 containers altogether. Tr.6/2070. But the alternatives are barely beginning to
21 enter the mailers' world. Even if the Postal Service were to initiate changes
22 immediately, he predicts more than a year would be required to convert
23 publishers. Tr.6/2071. In the short term, the penalties for sacks would simply
24 punish newspapers for circumstances they cannot help—and in the short term,
25 they are stuck with sacks. Tr.6/2071.
26

27 **VI. Conclusion**

28

29 This complaint and its proffered “cost-based rates” present many new
30 wrinkles for an already complex periodicals rate schedule. NNA has chosen to
31 address primarily the sacking charges because of resource limitations, and to

1 indicate its concern about the use of the complaint docket to continue the
2 complainants' relentless drive to create their own mailstream that is blissfully
3 untroubled by the problems smaller and less affluent publications are facing.
4 Nothing in NNA's case is intended to indicate that other aspects of the
5 complainants' rates are necessarily more welcome than the sack charge.
6 Similarly, NNA's case is not intended to reject legitimate concerns by all mailers
7 of unnecessary costs in the mailstream.

8

9 This docket has developed a massive amount of information that may help
10 both the Postal Service and mailers continue to improve the mailstream for all
11 periodicals. NNA recommends that the Commission allow the evolution of these
12 improvements to continue. Rather than issuing harsh mandates through new
13 rates that benefit the complainants without providing meaningful relief to the
14 smaller publications, the Commission should use its considerable advisory
15 powers to help both the Postal Service and mailers find new ways to avoid cost
16 that are practical, and not theories developed by those not in need of them.

CERTIFICATE OF SERVICE

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

A handwritten signature in black ink, appearing to read 'Tonda F. Rush', written over a horizontal line.

Tonda F. Rush
Counsel for National Newspaper Association

December 27, 2004
Arlington, VA 22205