

BEFORE THE
POSTAL RATE COMMISSION
Washington, DC 20268-0001

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

Docket No. C2004-1

REPLY BRIEF OF
THE NATIONAL NEWSPAPER ASSOCIATION, INC.

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I. The Commission's recommendation of a change in the rate structure would be tantamount to a change in rates.

The Postal Service has argued that the complainants have not formed a complaint that meets the requirements of 39 U.S.C. 3662. Initial Brief of the United States Postal Service at 6. It also asserts that the complainants have raised issues about mailer behavior that can be better addressed by the Postal Service's own operational and rate proposals with less disruption to customers. *Id.* NNA agrees in general with the Postal Service's position on this point, and also affirms that continued shaping of mailer behavior to achieve a more efficient Postal Service is in the best interest of all mailers so long as it is not done in an inescapably punitive fashion. NNA does not wish to belabor this argument, which is well briefed by both the Postal Service and other intervenors in the case. However, one key concern about the posture of the case deserves further mention.

The Commission decided in early stages of this docket that the case was not intended to become a vehicle for a rate recommendation. Commission Order No. 1399, issued March 26, 2004. The request of complainants is that the Commission recommend a new rate "structure" instead.

But the Commission's conclusion that a potential recommendation for a new rate structure somehow avoids the problems arising from a mailer-initiated review of rates deserves another look. This case is, in fact, tantamount to a rate case, simply with a delayed action mechanism. The complainants go to considerable length to point out to the Commission that their witnesses have done most of the work necessary to isolate the unit

costs that should provide the basis for not only a new structure, but new rates. Initial Brief of Time Warner et. al. at 14.

The fact that a new set of proposed costs, elasticities, volume projections and rates to cover them has not yet emanated from the Postal Service does not make this docket something other than the first stage of a rate case. In fact, if the Commission follows the mandates suggested by complainants, it will result in a structure so tying the Postal Service's hands in the remainder of this case, which comes in the next omnibus rate case proposal that USPS would have to do little other than fill-in-the-blanks on the Time Warner et al rate grid.

This truncation of the Postal Service's rate proposal process, and, with it, the Postal Service's ability to make judgments for the good of its business as well as that of its customers is exactly what draws this case over the line articulated in Dow Jones v. United States Postal Service, 268 F.2nd 786,790 (DC Cir. 1981).

A practical example of the wisdom of the Dow Jones court's interpretation of the rate-making authority appears in the colloquy between Time Warner and McGraw Hill with respect to the way differing cost characteristics should be recognized within the class. McGraw Hill witness Schaefer argues for recognizing some of the significant cost drivers in discounts, rather than through de-averaging. T-W asserts on brief that there is no difference between discounts and de-averaging. Initial Brief of Time Warner et.al., Footnote 12 at 20. But, while Time-Warner may be correct in the dictionary definitions, it is incorrect in the application of these two pricing mechanisms in the history of the periodicals class.

A key distinction is in the way the Postal Service has used the methodology of passthrough recognition to mitigate impact of rising costs, to encourage positive mailer behavior or to smooth the consequences of anomalous data. For example, faced with the troubling record of rising flats processing costs in R2000-1, the Postal Service tempered the impact of rates by passing along more than 100 percent of avoided costs in some rate categories. It argued that costing data in the category might not be precise, and that other sound policy reasons justified the greater-than-100 percent passthroughs. The Commission, while cautious about passing along higher discounts, agreed. See, e.g., Opinion and Recommended Decision of the Postal Rate Commission, Docket No. R2000-1, Volume 1 438-439. This is precisely the sort of flexibility that the PRA intended for the Postal Service to enjoy and the Commission to ratify in their mutual discretion to produce optimal results for its business and the mail volumes of its customers. A rigid, cost-only-driven rate grid would deprive both bodies of the ability to use reasonable discretion for the betterment of both the Postal Service and mailers in general.

II. Sacks may be a Hobson's Choice, but small volume mailers cannot avoid them, so long as delivery problems persist and better operational options are not available.

Complainants and NNA agree that mailers must use too many sacks to prepare their mail.

Where NNA and complainants' disagree is on the issue of the mailer's volition. NNA argues that mailers use small volume sacks because they have no choice, if they want to achieve a reasonable delivery time for their subscribers. Tr. 6/2067-2068.

Complainants seem to suggest instead that mailers make their choices through an obstinate lens of ignorance about systemwide costs, as if knowing the system costs would change a mailer's attitude that mail should be delivered on time, and that mail preparation should encourage that result.

Time Warner et. al. attempts to rebut mailers' widespread belief that sack preparation is a significant element in delivery performance by asserting that there is no evidence that small volume sacks improve service. It relies upon witness Stralberg's reading of a limited study that suggests the practice of sacking in the most direct possible route to a destination mail handling facility in fact does not improve service. But neither the study nor Stralberg's interpretation of it prove that common sense is wrong in this case. If a sack can be prepared to avoid opening until it reaches its destination SCF or delivery unit, the potential for a bundle or a piece to be laid aside in transit, in a not-fully-emptied sack or in some other nook or cranny of an originating facility obviously would be minimized. Naturally, given an observation of the obvious, mailers believe in the low volume sack, knowing the potential for delay, and having long experience in problems with long-distance delivery, as NNA witness Heath attests. Tr. 6/2066.

Time Warner et. al. misses the obvious point that sacks carry a cost for mailers as well. It argues that making sacks too costly to use is the way to solve a skin sack problem, Initial Brief of Time Warner et. al. at 32, as if mailers do not already have their own internal economic incentives to avoid sack multiplication, if they can.

T-W et. al. asserts that mailers can respond to signals that discourage the sacks. Id at 23. NNA agrees that mailers can respond to signals. It disagrees with the signal complainants wish to send. The signal they wish to send in this case is that small mailers should abandon hope of reasonable service unless they wish to pay exorbitant prices, while larger mailers by virtue of their size and sophistication should be able to continue to take advantage of the Postal Service's scope and scale to reach their own subscribers.

The way to solve the skin sack problem is to make skin sacks unnecessary. Either by finally solving the nettlesome problems with handling sparsely-destinating mail volumes, Tr. 6/2055, or creating containers that are easier and less costly for USPS to handle—such as the tubs Witness Heath wishes for, Tr.6/2046, the Postal Service could address the complainants' concerns without driving the smaller mailers out of the mailstream for their long distance subscriber mail. Granting complainants' wishes in this case will short circuit a process that is already evolving because it is in the mutual interests of all the parties, and leave the periodicals mailstream impoverished of its content as a result.

III. The key issue in this case is not about unit costs, but about the recipient of the mail; i.e. should the periodicals mailstream retain subscribers in low-density, distant destinations, or not?

Complainants attempt to shift the burden of proof in the case to intervenors, as they dispute whether intervenors have provided sufficient information to rebut the awesome expertise of Time

Warner's witnesses. See, for example, Initial Brief of Time Warner et. al. at 28, where complainants' disparage the intervenors' concerns as "unsubstantiated."

Complainants and NNA agree that the cost structure recommended here would create substantial harm to mailers using low volume sacks. Id. Footnote 5, at 10. Complainants want the prices to lead to more pieces in each sack. They want the mail of long-distance periodicals' subscribers to be aggregated so that mail is initially opened and worked at originating plants, and not dispatched through the delivery network to avoid piece handling until the piece has arrived as far into the downstream delivery network as possible. Only by creating such concentrations could a low-volume, long-distance mailer—like the country newspapers trying to reach the snow birds and exiled residents—avoid the devastating cost impact of the proposed cost structure.

NNA does not attempt to rebut witness Stralberg's analysis of costs, as T-W et al. asserts. Id at 12. In addition to having great respect for the work of witness Stralberg, as well as witness O'Brien—both of whom have worked to improve efficiency for periodicals overall—NNA is not in the position to garner the resources to question Stralberg's work. Moreover, NNA has in the past shared complainants' concerns for some of the cost-drivers in the periodicals mailstream. NNA's focus in this case is with legal and public policy interpretations, not the data provided by complainants' witnesses—most of which NNA neither affirms nor disputes.

Stralberg asserts that some small publications might benefit from complainants' proposed rate grid. NNA does not necessarily

disagree with that assertion. The grid is clearly designed to benefit short-distance, high density mail, which describes some of NNA's newspaper mail.

But the massive compilation of data in this docket does not necessarily lead to the conclusion that the periodicals class should be so drastically de-averaged that the most dense, highly sorted and uniformly packaged mail should be provided its own rates, while the detritus of postal operations should fall upon smaller mailers that are unable to achieve the admirable mail preparation profile of complainants.

It is the long-distance reader of a small publication that lacking sufficient density to create carrier route packages, the volume to create pallets or the resources to drop ship who suffers in this case. Therefore, to NNA's way of thinking, this case is not about whether sacks or bundles or pallets create costs. Rather it is about a fundamental policy of the purpose of the periodicals class.

Witness Crews describes the choices a publisher would have to make if the rate structure advanced by this case were to replace the existing structure. Whether or not the publisher in each of the examples he cites has in fact achieved a desirable service goal in devising his preparation scheme is irrelevant so long as a reasonable conclusion can be reached that in many cases skin sacks do improve delivery times.

The fact is that so long as the publisher is faced with either aggregating mail into a few sacks—and thereby losing a subscriber with deteriorating service—or jacking up subscription rates so the expense of skin sacks can be covered, the loser is the reader. The

reader gets stale newspapers. Or the reader gets jacked-up rates. Chances are, the reader finding such elegant choices unacceptable really gets nothing in the end except the opportunity to end the frustration by canceling a subscription. Perhaps our hypothetical reader will be pleased to accept delivery instead of some of the mightier products published by complainants. Perhaps not. Whether such restricted options are desirable in the future of the periodicals mailstream is what the Commission in this case must decide.

Respectfully submitted,

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