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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

REPLY BRIEF
OF THE UNITED STATES POSTAL SERVICE

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Introduction

In its initial brief, the Postal Service outlined the reasons why the record developed in this proceeding, in conjunction with the Commission's decision to use a section 3662 complaint case as the vehicle to address the issues raised, leaves the Commission with no option but to terminate the case by rejecting the complaint as unjustified. Briefs submitted by the APWU (pages 4-5), the NNA (pages 14-17), and ABM/McGraw-Hill (pages 2-11) reach similar conclusions. Nothing presented in the briefs filed by complainants or MPA justify any alternative outcome for this proceeding. Those parties, for example, argue why the type of rate structure proposed by complainants would, in their view, be beneficial and better align Periodicals rates with costs and with economic efficiency, but make no concerted effort to address the threshold issue of whether the existing rates actually fail to conform to the polices of the Act. In the absence of specific and well-supported claims that the complaint has been justified, there is little to which the Postal Service is inclined to respond in this reply brief.

Instead, this reply brief focuses on a new proposal regarding Periodicals costs advanced by the OCA in its initial brief, and makes comments on several other matters raised by the briefs of other parties. The Postal Service's decision to forgo further discussion of other matters raised in the briefs of other parties, however, should not be equated with agreement regarding those statements or comments which have not been explicitly addressed.

I. The OCA's Untimely and Misguided Suggestion Regarding Institutionalizing a Portion of Periodicals Costs Does Not Merit Serious Consideration

In its initial brief at pages 3 and 12-17, the OCA surfaces for the first time the radical suggestion that the widely-acknowledged problems that a more cost-based Periodicals rate structure would create for certain types of publications could be avoided if a portion of the costs incurred to handle those publications were treated as institutional rather than attributed to Periodicals:

> OCA recommends to the Commission that it take steps to estimate any "excess" costs that are the result of Congress' policy to promote the nationwide distribution of educational, scientific, cultural, and informational mail matter and treat these costs in the manner of Alaska air transportation costs – as costs attributable to a statutory mandate rather than the specific elements of service for the underlying class. The treatment that follows from this determination is to shift the "excess" costs of low-volume Periodicals from the attributable cost pool for Periodicals into the institutional cost pool for recovery from all mailers.

OCA Initial Brief at 3. This suggestion should be rejected out of hand. Its deficiencies are both procedural and substantive.

Procedurally, there are a myriad of problems with the OCA's suggestion. First, by waiting to advance this proposal until the briefing stage of this proceeding, the OCA has guaranteed that there is absolutely nothing in the evidentiary record to support it. If the OCA wanted its suggestion to receive serious consideration, it should have addressed the matter in testimony, not on brief. Second, the OCA fails to cite any basis to conclude that the complaint has been justified (i.e., that the current Periodicals rates do not conform to the

policies of the Act.) Therefore, like the Complainants, the OCA has failed to identify any means by which the Commission can do other than terminate the proceeding as unjustified. Third, even if the Commission, contrary to the record evidence, were to find the complaint to be justified, the sole remedy available under section 3662 would be to issue a recommended decision to the Governors. The OCA is suggesting that the Commission "instruct the Postal Service to submit testimony in the next rate case" that estimates the amount of costs to be shifted from attributable to institutional. OCA Brief at 16-17. There is no statutory authority for the Commission to issue any such instructions to the Postal Service under any circumstances following a section 3662 proceeding.

Substantively, the proposal is equally flawed. The alleged similarities between the Alaska air costs and "excess" Periodicals costs are illusory. In the Alaska situation, geographic and climatic conditions cause infrastructure deficiencies (i.e., the lack of roads) which require the Postal Service to provide a higher level of transportation, and thereby incur additional costs not required to deliver similar mail elsewhere. With respect to Periodicals mail, however, there are no service distinctions or operational factors which result in the Postal Service handling any category of Periodicals mail differently. In other words, in Alaska, operational and other factors cause the creation of a distinct pool of costs (air costs) that would not have been incurred absent those operational limitations, and the premium adjustment is limited to the treatment of that well-defined cost pool. For Periodicals, however, there is no difference in cost

incurrence and no operationally-defined cost pool to be reallocated.

The OCA suggests basing its cost-shifting proposal on "high-volume" versus "low-volume" publications, but both types of publications use the same operations, albeit to different degrees. Without an operations-based cost pool or service distinctions, the treatment of costs would become merely a function of the identity of the mailer.[1] As a practical matter, parties would continually be trying to shift the line between subsidized and non-subsidized publications to suit their own interests.[2]

The OCA's suggestion is proffered as a panacea for the dilemma which has vexed the Periodicals community for decades – how to determine the level of rate averaging which most appropriately balances the interests of senders and recipients of both high-cost and low-cost Periodicals. Under the OCA's apparent view, it is possible to maintain low rates for low-cost Periodicals, and low rates for high-cost Periodicals, and it is unnecessary to attempt to use the rate structure to encourage all Periodical mailers to take whatever steps they

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[1] Surprisingly, the OCA claims that, under its proposal, the Commission "would not be favoring any particular Periodicals, which the *MOAA* Court warned would violate the First Amendment." OCA Initial Brief at 15. Obviously, however, this claim is patently false. What the OCA has deemed "low-volume" Periodicals would have a portion of their costs overtly covered by all mailers through the pricing process, while "high-volume" Periodicals would not share this favorable rate treatment. It is difficult to envision a more blatant case of "favoring … particular Periodicals."

[2] Alternatively, if unable to shift the line, mailers might take steps to ensure that they stay on the favored side of the line. If the line is based on volume, for example, mailers near the limit might restrict their circulation in order to stay eligible for the favored rates. Such actions would be directly contrary to the objective of the enhanced dissemination of information.

reasonably can to minimize the costs incurred by the Postal Service to handle their publications. The OCA seems willing to abandon completely any notion that high-cost Periodicals could ever alter any of their cost-causing characteristics, and thereby reduce the amount of postal resources required to deliver them. Instead, the OCA proposes a regime in which portions of Periodicals costs are, in effect, perpetually subsidized by all mailers.[3] While this result may appear to advance the goal of widespread dissemination of information, it conflicts with the more fundamental statutory objective that all subclasses of mail cover their own costs. 39 USC § 3622(b)(3).

Establishing the best possible postal rates requires that hard choices must be made. While the OCA's suggestion may seem like an attractive option to avoid having to make hard choices, its adoption would constitute neither good policy nor good economics. More to the point for present purposes, it should have no bearing on the Commission's resolution of the instant complaint.

II. Other Matters

NNA argues that there cannot be a penalty for use of sacks until a meaningful alternative exists. NNA Brief at 19. The Postal Service is trying to address service concerns of newspapers and small publications, and would like to investigate whether the use of low-volume sacks improves service

[3] Once again, the situation with Periodicals, where technology and mail preparation practices can and do continue to evolve over time, is quite distinct from the situation in Alaska, where the lack of roads will likely remain a problem no matter how far one wishes to project into the relevant future.

performance. Simply stated, handling extremely small amounts of mail in the Periodicals mailstream may be both time consuming and costly. The Postal Service is also working on alternatives to sacking small volumes of Periodicals mail. In particular, the Postal Service is evaluating alternatives that will move newspapers, particularly in-county publications, from sacks into tubs, or out of containers altogether. Tr. 6/2070-71. In the end, the resolution needs to be one that considers the impact on the small volume user, in terms of postage increases, and the impact on other customers, who may be compelled to recover an additional cost burden.

Complainants at page 5 of their initial brief argue that little has been done in the six years since the Periodicals Review Team issued its Report in March 1999 recommending that "[t]he Periodicals rate structure should be reviewed to ensure that it is consistent with the overall Periodicals processing strategy and induces appropriate mailer behavior." Yet complainants' own witness Schick described joint efforts between the Postal Service and mailers over that period with which he was involved. Tr. 2/375-382. The first summary he provided concerns the "Flats Preparation/Presentation Alternatives." The second attachment provided by witness Schick concerns the "Flats Container Development Work Group" and is dated November 5, 2003. In other words, as further evidenced by the Docket No. R2001-1 pallet discounts, and the co-palletization cases described in its initial brief, the Postal Service has

continuously been involved in the evaluation of possible flats improvements that could have a positive impact on the costs for Outside County Periodicals.

Complainants argue on page 16 that Postal Service witness "Miller does not explain what he means by 'bottom-up costs,' an expression not used by Stralberg or Mitchell. Nor does he explain in which sense he believes that the types of unit costs computed by Stralberg's model, or by LR-I-332 are fundamentally different from the unit costs he himself presented in Docket No. R2001-1, other than being somewhat less aggregated." Complainants, however, never posed any such questions to witness Miller in interrogatories or during hearings, even though they had the opportunity to do so. On pages 16-17, they also state, "Without any comprehensible explanation, he insists that the same data he and others used in developing the current rates are not reliable when used by Stralberg in developing the proposed rates…. Nor does Miller offer suggestions for any better data source that Stralberg could have made use of, or respond constructively to any of the many costing issues Stralberg raised." Again, no inquiries concerning these topics were posed to witness Miller.

The Magazine Publishers Association (MPA) claims that adverse rate impacts from complainants' proposed rate structure could be mitigated by "basing sack charges on less than 100% passthroughs." MPA Brief at 8. But sack prices are not designed using passthroughs under complainants' proposal. Instead, the sack prices directly match the "bottom-up" sack costs provided by witness Stralberg. For example, witness Stralberg provides a sack cost of $0.93

for DDU entry, and witness Mitchell proposes a rate per sack of $0.93 for DDU entry. Tr. 1/61; Tr. 3/840. The sack rates do not reflect a cost differential or any passthrough. As such, rate mitigation would not be merely a matter of adjusting a passthrough. Instead it would be much more complex as the rate design process would involve determining which costs should be fully covered and marked up, and which would not, with accompanying rationales that explain the different treatment. In the end, the process is not nearly as simply as MPA states.

Complainants on page 16 claim that witness Miller was ignorant about the genesis of USPS-LR-I-332. But witness Miller's claim related not to the timing of that library reference's underlying cost study, but rather that it was filed in support of "broad savings estimates" (Docket No. C2004-1, USPS-RT-1, page 9 at 6) and was not filed in support of a cost-based rates proposal. Complainants at page 23 assert that "mailers cannot respond to signals relating to network configuration or to most of the other drivers that Miller lists." But the Postal Service does limit eligibility for discounts based on where the mail is entered. For example, First-Class Mail carrier route presort can only be entered at CSBCS or manual sites.

Complainants at page 19 further claim that the Postal Service has not addressed many of the costing issues addressed in witness Stralberg's testimony. They urge the Postal Service to address all of these issues in its preparation of the upcoming rate case. *Id*. In light of the Postal Service's

already patent interest in, and activities directed toward, improving Periodicals rates, the Postal Service will fully consider all reasonable approaches that will advance that goal. Unfortunately, however, the resource drain from litigating this complaint docket has made it less likely that all such issues could be addressed in the next omnibus rate proceeding.

Conclusion

For the reasons explained in full in its initial brief, the Postal Service respectfully submits that the Commission should terminate this proceeding by finding that the complainants have failed to justify their complaint.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, in accordance with section 12 of the Rules of Practice, I have this day served the foregoing document upon all parties of record in this proceeding.

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