

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

Postal Rate and Fee Changes, 2006) Docket No. R2006-1

**RESPONSE OF AMERICAN BUSINESS MEDIA
TO OPPOSITION OF TIME WARNER TO COUNTER-DESIGNATIONS OF
EVIDENCE FROM PRIOR DOCKET
(September 1, 2006)**

American Business Media hereby responds to the August 30, 2006
“Partial Opposition of Time Warner Inc. To Motions of American Business Media
and McGraw-Hill to Counter-Designate Evidence from Prior Docket.”

Time Warner objects to some or all of about 58 pages of the record
material from Docket No. C2004-1 designated by American Business Media on
August 23, 2006, but its grounds for doing so are unsupported. It states
(Opposition at 2) that the excerpts it identifies “do not rebut anything in the
testimony that Time Warner has moved to designate and have little or no
relevance to the designated testimony or to the issues that will be addressed in
Time Warner’s direct testimony in the ongoing rate case.”

American Business Media’s first response is that Time Warner fails to cite
any authority for the proposition that testimony designated from a prior docket
must be in rebuttal to or related to other testimony that has been designated
from that docket, nor does it explain how American Business Media or, for that
matter the Presiding Officer, is to know at this stage whether or not designated
material will be related to issues that will be addressed in testimony that Time

Warner will file on September 6th. Certainly, Rule 31(c) imposes no such limitation.

Moreover, even if, as Time Warner suggests, certain of the material designated by American Business Media turns out to be unrelated not only to the evidence that Time Warner has designated but also to its future testimony that no party has yet seen, Time Warner has not shown that it is irrelevant to this docket or identified any prejudice to it or any other party that would result from its admission. Designated material that is irrelevant is, by definition, irrelevant, and no harm results from it being “in the record.”

American Business Media, however, does not agree that, even if the Time Warner-created test were to be applied, all of the material to which it objects falls within that test. American Business Media has examined the material to which Time Warner has objected in an effort to narrow our differences, without conceding of course that any of the designations are inappropriate. That effort has been made much more difficult by Time Warner’s failure to address the specific reasons that it alleges support each proposed exclusion. Nevertheless, American Business Media will not contest the Time Warner opposition to the following fifteen (out of twenty-two) opposed designations (as identified in the Time Warner opposition):

Testimony of witness Stralberg

ABM/Time Warner et al. T2-6, Tr. 82
ABM/TW et al. T2-13, Tr. 88
ABM/TW et al. T2-36, Tr. 109-11
MH/TW et al. T2-2, Tr. 133
Tr. 212, l. 11 through 213, l. 8

Testimony of witness Mitchell

ABM/TW et al. T1-93, Tr. 989
MH/TW et al. T1-22, Tr. 1036-1039
USPS/TW et al. T1-15, Tr. 1109

Testimony of witness Bradfield

Tr. 1687, ll. 9-13
Tr. 1701, ll. 7-11

Testimony of witness Cavnar

Tr. 1745, ll. 13-17

Testimony of witness McGarvy

Tr. 1775, l. 8 through 1776, l. 2
Tr. 1777, ll. 1-21
Tr. 1780, l. 7 through 1783, l. 2—except Tr. 1782, lines 3-12
Tr. 1786, l. 8 through 1787, l. 5

However, American Business Media does oppose Time Warner's objections to the following eight designations,¹ for the reasons stated below:

Testimony of witness Stralberg

ABM/Time Warner et al. T2-7, Tr. 83—this response addresses the witness's attitude toward the allegedly higher costs imposed upon the Postal Service by some mailing characteristics, those of smaller-circulation publications, but not others, such as those associated with time value publications. This issue is not only related to the testimony supporting "cost-based" rates designated by Time Warner, but is almost certainly going to be related to the testimony it will be filing here.

¹ We recognize that 15 plus 8 equals 23, not 22, but American Business Media opposes only a portion of one exclusion sought.

ABM/Time Warner et al. T2-34, Tr. 106-08—this response addresses the situation where, with the types of rates (not the exact rates) supported by Time Warner in the testimony it designated, and likely to be proposed here, the rates for certain Periodicals exceed the postage costs that they would incur at the Standard rates. American Business Media is willing to remove the table at Tr. 108 if Time Warner is willing to update it.

ABM/Time Warner et al. T1-3 (redirected), Tr. 112-27—this material essentially shows the postage paid at the pre-January, 2006 rates by a group of Periodicals, those published by the complainants in Docket No. C2004-1. American Business Media is willing to withdraw this designation if Time Warner is willing (and able) to provide updated data. American Business Media is concerned, however, that Time Warner will be unable to do so, even if willing, for publications of the other four complainants, so that these data, which would have to be adjusted for the present rates (which fortunately is doable, given the across-the-board nature of January's increase), may well be the best available data.

Testimony of witness Bradfield

Tr. 1691, l. 22 through 1692, l. 5—Time Warner's opposition to the inclusion of this material, without any explanation, is especially perplexing. In the 7 lines Time Warner seeks to exclude, American Business Media witness Bradfield comments that maximizing efficiency—a topic in the testimony designated by Time Warner and sure to be raised again—should not be the only

goal for those designing Periodicals rates, even though “we all agree that rates should to some degree reflect costs, and they already do.”

Testimony of witness Cavnar

Tr. 1714-15—this interrogatory response contains the witness’s experience with both Periodicals and Standard rates and the possibility that the former can under certain proposals of the type proposed by Time Warner in the past exceed the latter, an issue that is likely to be relevant to the testimony Time Warner will be filing on September 6th, and that may be relevant to the Postal Service’s proposal as well.

Tr. 1739, l. 9 through 1741, l. 18—here the witness contrasts his views of the significance and recognition of “ECSI” value in Periodicals rates with those he attributes to Time Warner. He quotes from two Postal Rate Commission decisions. While he uses the rates proposed in Docket No. C2004-1 in the course of his discussion, it is much broader than that and likely to remain relevant.

Testimony of witness McGarvy

Tr. 1766-67—Here, the witness discusses why publishers whose financial situation will be made precarious by higher postal rates are unlikely to publicize that fact, an issue that is relevant any time rates are raised and impact is an issue.

Tr. 1780, l. 7 through 1783, l. 2 (portion)—As noted above, American Business Media will not oppose exclusion of most of this designation, except that it continues to support the inclusion of the testimony at Tr. 1782, lines 3-12.

There the witness contrasts the situation of a reasonably large and sophisticated publisher with that of a much smaller publisher when approaching printers and seeking to accomplish co-palletization. That is certainly an issue that is related to the Time Warner designated material from Docket No. C2004-1, which assumes that price signals are fair and effective, as well as to the Postal Service's proposal and the expected Time Warner proposal in this docket. In addition, this material is much the same as that found on Tr. 1783, beginning on line 3, to which Time Warner did not object.

CONCLUSION

For the foregoing reasons, Time Warner's objections to the designations submitted by American Business Media should be rejected as unsupported by rule or precedent. If they are nevertheless considered, American Business Media will not contest the objections listed at the bottom of page 2 to the top of page 3 above, but submits that the material addressed thereafter should be admitted into the record.

Respectfully submitted,

/s/ David R. Straus

David R. Straus

Attorney for American Business Media

Law Offices of:

Thompson Coburn LLP
1909 K Street, NW
Suite 600
Washington, DC 20006-1167
(202) 585-6900