

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

POSTAL RATE AND FEE CHANGES, 2006

Docket No. R2006-1

OBJECTION OF THE UNITED STATES POSTAL SERVICE TO
INTERROGATORIES OF TIME WARNER INC. TO
POSTAL SERVICE WITNESS TANG (TW/USPS-T35-11-13)
(September 26, 2006)

The United States Postal Service hereby objects to the following interrogatories of Time Warner Inc., filed on September 21, 2006: TW/USPS-T35-11-13. The interrogatories are reprinted below, and are followed by the Postal Service's objection.

TW/USPS-T35-11 Please refer to the data on 251 publications that you submitted in response to the question raised by Chairman Omas at your August 10 hearing. Please confirm each of the following, or explain if unable to confirm.

- a. The publication data referred to above are the same data that you submitted to the Commission in Docket No. C2004-1, the Time Warner et al. complaint case.
- b. In C2004-1 you initially submitted, through your testimony in that docket, data on only 55 publications.
- c. On September 23, 2004, POIR 2 in Docket C2004-1 requested data on additional publications.
- d. On October 15, 2004, only three weeks after the issuance of POIR 2, you were able to provide detailed data on an additional 196 publications, bringing the total to 251.

TW/USPS-T35-12 Referring again to the 251 publications on which you submitted data in response to Chairman Omas' request at your August 10 hearing, please confirm the following, or explain fully if unable to confirm.

- a. Many of the publications in your sample used, at the time your data was collected, many sacks with less than 24 pieces in them.
- b. Since May 2006, sacks of Outside County Periodicals are required to contain at least 24 pieces.
- c. Applying a rate design that includes a per-sack charge to your C2004-1 publication data is likely to exaggerate the postage that would be paid by any publication that formerly used sacks with fewer than 24 pieces.

d. In order to accurately determine the impact of a rate design that includes a per-sack charge on a publication that previously used sacks with fewer than 24 pieces, one must consider not only the reduced number of sacks but also the likely migration of bundles to sacks with less presort.

TW/USPS-T35-13 It is now four months since the 24-piece sack requirement went into effect. Given that, and the importance of evaluating accurately the likely impact of the various rate designs proposed in the present docket, please provide a fresh set of mail characteristics data, either for the same 251 publications that you used in C2004-1 or a similarly selected set of publications. The data should be collected for publications that are already in compliance with the 24-piece per sack requirement and other recent regulations.

The data provided for each publication should include all the information needed to determine what postage each publication:

- (1) pays under current (R2005-1) rates;
- (2) would pay under your proposed rates
- (3) would pay under the rates proposed in this docket by witness Glick (MPA-T-2); and
- (4) would pay under the rates proposed in this docket by witness Mitchell (TW-T-1).

The Postal Service objects to the above-reference interrogatories on the grounds of improper Rule 25(a) discovery and burden. As a preliminary matter, these interrogatories are clearly improper follow-up. Witness Tang finished appearing before the Commission over a month ago, and she has not filed any recent responses to interrogatories that are still subject to follow-up discovery. Time Warner appears to recognize this, since their cover page to these new interrogatories cites Rule 25(a)¹ as the authority for filing these interrogatories at this time.

However, Rule 25(a) does not authorize additional discovery against witnesses from the Postal Service's direct case. Instead, Rule 25(a) is directed at "discovery against a participant." Moreover, Rule 25(a) discovery is generally limited to issues not addressed in the Postal Service's direct case which, the Postal Service submits,

¹ Rule 25(a) is based upon the former Special Rule 2E, which was incorporated into Rule 25(a) in 1999. See Order No. 1274 (1999)

logically includes responses to interrogatories or questions posed during hearings on the Postal Service's direct case. Specifically, in interpreting Special Rule 2E (and thus Rule 25(a)), the Presiding Officer has stated:

Questions which ask a Postal Service witness to explain a study he directed and/or presented as part of the Service's direct presentation, or to comment on a matter related to, albeit not specifically addressed in such a study, would appear to be beyond the scope of Rule 2E.

See P.O. Ruling No. R87-1/108 at 2. The focus of the above-referenced interrogatories is the data set on 251 publications, provided by witness Tang in response to a question posed by Chairman Omas at the August 10, 2006 hearing.² Asking witness Tang to clarify certain aspects of that data set is outside the scope of Rule 25(a) discovery, as interpreted by the Commission. Therefore, the Postal Service objects to TW/USPS-T35-11-13 as improper under Rule 25(a).

In addition, even if these questions were directed to the Postal Service, rather than witness Tang, they would not be proper discovery under Rule 25(a). Rule 25(a) applies when a party needs to obtain information "available only from the Postal Service." See 39 C.F.R. § 3001.25(a). Interrogatories TW/USPS-T35-11-12 do not seek information only available from the Postal Service, because the requested information is available in the records for Docket No. C2004-1 and R2006-1. Thus, the Postal Service objects to those two interrogatories on the grounds of improper Rule 25(a) discovery, even if they were to be redirected to the Postal Service as an institution.

² See Response of United States Postal Service Witness Tang to Question Posed by Chairman Omas at the August 10, 2006 Hearing (August 17, 2006)

Finally, even if interrogatory TW/USPS-T35-13 is considered to be properly filed under Rule 25(a), the Postal Service objects to it on the grounds of burden. The Postal Service does not have any data available which would respond to this interrogatory, without extensive preparation and analysis.³ Producing the data requested in TW/USPS35-13 would require developing a sample frame and data collection forms, selecting publications, training multiple sites and ensuring site compliance, and verifying the data that are collected. The burden is estimated at 400-500 work hours, which realistically would prevent a response in under three months. Therefore, the Postal Service objects to TW/USPS-T35-13 on the grounds of burden.

For the aforementioned reasons, the Postal Service objects to TW/USPS-T35-11-13 on the grounds of improper Rule 25(a) discovery and burden.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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³ The Postal Service believes that proper discovery under this rule is limited to data that have already been prepared, rather than to data requiring extensive analysis.