

their opposition was not predicated on, and did not allege, any error or deficiency in the analysis of costs and cost drivers that Time Warner has moved to designate.

Time Warner also moved to designate approximately 20 pages from the Direct Testimony of Robert W. Mitchell (TW et al.-T-1) in Docket No. C2004-1, explaining that the designated portions of Mitchell's testimony

presented a comprehensive analysis of the development of the Periodicals class rate design over an extended historical period and proposed "a more cost-based rate structure than the current structure [that] would provide financial incentives to mailers to engage in lower cost mailing practices by encouraging mailers to use more efficient bundling, containerize more efficiently, change to a more efficient zone distribution, and increase the proportion of machinable pieces."²

In response to Time Warner's proposed designations, ABM has moved to counter-designate 55 pages of cross-examination of Stralberg, approximately 100 pages of cross-examination of Mitchell, and approximately 40 pages of testimony by three ABM rebuttal witnesses. McGraw-Hill has moved to counter-designate most of the testimony of its one witness in that docket. Substantial portions of ABM's and McGraw-Hill's proposed counter-designations are unobjectionable, but other substantial portions 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.

To the extent that the proposed counter-designations allege that the rate schedule proposed by Time Warner in Docket No. C2004-1 would have particular effects on various types of publications: (1) they are not proper rebuttal, because the testimony Time Warner has moved to designate is not addressed to that rate schedule but to more general issues of cost causation and rate design; (2) they

² TW Motion at 2 (quoting Order No. 1446, ¶ 5004).

have little relevance to the issues in this docket, because Time Warner's direct testimony in this docket, in response to the guidance provided by the Commission in Order No. 1446, will advocate substantially different rates from those proposed in Docket No. C2004-1 and because they are largely predicated on the alleged effects on smaller publications of the elimination of the opportunity to engage in extensive use of "skin sacks," an issue that has since been mooted by the Postal Service's adoption of a 24-piece per sack minimum.

To the extent that the proposed counter-designations address the continuing desirability of an unzoned editorial pound charge in Periodicals Class: (1) they are not proper rebuttal, because the portions of testimony that Time Warner has moved to designate do not advocate a zoned editorial pound charge; and (2) they are not relevant to the issues in this docket, because the rates that Time Warner will advocate in this docket will not include zoning of the editorial pound charge.

Opposition to ABM and McGraw-Hill counter-designations of testimony addressed to the specific rate schedule proposed in Docket No. C2004-1

Time Warner therefore opposes as improper rebuttal and as lacking in relevance ABM's and McGraw-Hill's motions to counter-designate the following materials, which address the impact of the specific rate schedule proposed in C2004-1 on various publications, which do not address the portions of Stralberg's or Mitchell's testimony that Time Warner has moved to designate, and which have at most a remote and tangential relevance to the substantially different rate proposal that Time Warner will advocate in its direct case in this docket.

ABM Motion

Testimony of witness Stralberg

ABM/TW et al. T2-6, Tr. 82
ABM/TW et al. T2-7, Tr. 83
ABM/TW et al. T2-13, Tr. 88
ABM/TW et al. T2-34, Tr. 106-108
ABM/TW et al. T2-36, Tr. 109-11

ABM/TW et al. T1-3 (redirected), Tr. 112-127
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. 1691, l. 22 through 1692, l. 5
Tr. 1701, ll. 7-11

Testimony of witness Cavnar

Tr. 1714-15
Tr. 1739, l. 9 through 1741, l. 18
Tr. 1745, ll. 13-17

Testimony of witness McGarvy

Tr. 1766-67
Tr. 1775, l. 8 through 1776, l. 2
Tr. 1777, ll. 1-21
Tr. 1780, l. 7 through 1783, l. 2
Tr. 1786, l. 8 through 1787, l. 5

McGraw-Hill Motion

Testimony of witness Schaefer

Tr. 1923 [p. 5], l. 8 through Tr. 1925 [p. 7], l. 15
Tr. 1927 [p. 9], ll. 2 -6
Tr. 1929 [p. 11], ll. 8-14
Tr. 1934 [p. 16], l. 24 through Tr. 1939 [p. 19], l. 10
Tr. 1942 [p. 24], l. 5 through Tr. 1943 [p. 25], l. 16
Tr. 1945 [p. 27], l. 23 through Tr. 1947 [p. 29], l. 9

Opposition to ABM counter-designations of testimony addressed to the proposed zoning of the editorial pound charge in Docket No. C2004-1

Time Warner also opposes as improper rebuttal and as lacking in relevance ABM's motion to counter-designate the following materials, which address the continuing desirability of an unzoned editorial pound rate, which do not address the

portions of Stralberg's or Mitchell's testimony that Time Warner has moved to designate, and which have no relevance to the rate proposal that Time Warner will advocate in its direct case in this docket.

ABM Motion

Testimony of witness Mitchell

MH/TW et al. T1-21, Tr. 1035
MH/TW et al. T1-22, Tr. 1036-1039

Testimony of witness Cavnar

Tr. 1739, l. 9 through 1741, l. 18
Tr. 1745, ll. 4-10

Respectfully submitted,

s/ _____
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