

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

POSTAL RATE AND FEE CHANGES, 2006:

Docket No. R2006-1

**MOTION BY THE MCGRAW-HILL COMPANIES FOR CLARIFICATION OF
PRESIDING OFFICER'S RULING ON PERIODICALS-RELATED
DESIGNATIONS FROM OTHER CASES**

The McGraw-Hill Companies, Inc. ("McGraw-Hill"), through its undersigned counsel, respectfully moves for clarification of Presiding Officer's Ruling No. R2006-1/75 (October 6, 2006) ("Ruling"), addressing Periodicals-related designations from other cases. Attachment D-2 to the Ruling is intended to set forth those portions of the counter-designated portions of the testimony of McGraw-Hill witness Schaefer in Docket C2004-1 that the Presiding Officer has admitted into evidence in this proceeding, over the partial objection of Time Warner Inc. ("Time Warner"). However, apparently due to typographical errors and oversight, Attachment D-2 (Second Segment) does not track the body of the Ruling in this regard, as explained below. McGraw-Hill accordingly seeks clarification of Attachment D-2 in the following respects.

1. The first "Second Segment" entry in Attachment D-2 – admitting into the record "page 4, line 6 through page 7, line 7," corresponding to "Tr. 6/1922 line 6 through Tr. 6/1923, line 7" – is internally inconsistent (page 5, rather than page 7, corresponds with Tr. 6/1923) and appears to be both over-inclusive and under-inclusive because at page 15 of the Ruling, the Presiding Officer struck page 5 line 8 through page 6 line 14 (Tr. 6/1923 line 8 through Tr. 6/1924 line 14) but specifically allowed page 6 line 15 through page 7 line 4 (Tr. 6/1924 line 15 through Tr. 6/1925 line 4).

Thus, the first “Second Segment” entry in Attachment D-2 should apparently be changed into two separate entries as follows:

page 4, line 6 through page 5, line 7 (Tr. 6/1922, line 6 through Tr. 6/1923, line 7);

page 6, line 15 through page 7, line 4 (Tr. 6/1924, line 15 through Tr. 6/1925, line 4).

Further, it appears that the Presiding Officer may have intended that the latter entry should extend through page 7 line 15 (Tr. 6/1925 line 15). In the body of the Ruling, the Presiding Officer did not address Time Warner’s objection to page 7 lines 6-15 (Tr. 6/1925 lines 6-15) but did overrule Time Warner’s related objections to the portion of witness Schaefer’s testimony that is introduced at page 7 lines 6-15 (Tr. 6/1925 lines 6-15) on grounds that McGraw-Hill argued should apply as well to page 7 lines 6-15 (Tr. 6/1925 lines 6-15).¹ Attachment D-2 of the Ruling nevertheless excludes without explanation the heading for that portion of the testimony and its introductory sentence (page 7 lines 6-15) (Tr. 6/1925 lines 6-15). If that material were to be included, the second corrected entry above would merge into the middle “Second Segment” entry in Attachment D-2 as follows:

page 6, line 15 through page 16, line 24 through footnote 8 (Tr. 6/1924 line 15 through Tr. 6/1934, line 24 through footnote 8).

2. The third “Second Segment” entry in Attachment D-2 – admitting into the record “page 21, line 11 through page 25, line 16,” corresponding to “Tr. 6/1939, line 11 through Tr. 6/1943, line 16” – apparently reflects a typographical error and inexplicably omits designated relevant testimony of witness Schaefer at page 19 line 11 through

¹ See Ruling at 15 (Second Segment – Parts B and C); Reply of The McGraw-Hill Companies, Inc. to Partial Objection of Time Warner Inc. to Motions of American Business Media and McGraw-Hill to Counter-Designate Evidence From Prior Docket, filed September 5, 2006 (“McGraw-Hill Reply”), pp. 4-7.

page 21 line 11 (Tr. 6/1937 line 11 through Tr. 6/1939 line 11) to which Time Warner apparently did not object. Time Warner objected to “Tr. 1934 [p. 16], l. 24 through Tr. 1939 [p.19], l. 10”, but page 19 of witness Schaefer’s testimony corresponds to Tr. 1937, not Tr. 1939 (which corresponds to page 21).

It seems apparent that this objection of Time Warner extends only to page 19 line 10, which is where a subsection of the testimony ends, rather than page 21 line 10, which falls in the middle of a sentence toward the beginning of another subsection addressing constraints on the co-palletization or co-mailing of time-sensitive publications – which is not implicated by any objection of Time Warner and is unquestionably responsive to the designated testimony of Time Warner witness Mitchell and to issues at the heart of this case for Periodicals mailers. McGraw-Hill thus understood the objection to extend only from “page 16 (Tr. 1934) line 24 through page 19 (Tr. 1937) line 10” (McGraw-Hill Reply at 7), correlating page 19 with Tr. 1937 rather than 1939. The Presiding Officer agreed at page 16 of its Ruling (“Second Segment – Part D”), where he cited and addressed only that portion of the testimony, *not* the unrelated testimony from page 19 (Tr. 1937) line 11 through page 21 (Tr. 1939) line 11.

However, on page 13 of the Ruling, the Presiding Officer incongruously corrected the Time Warner typo (“Tr. 1939 [p. 19]”) by changing page 19 to page 21 rather than changing Tr. 1939 to Tr. 1937, and this confusion was carried over to Attachment D-2. Yet the latter change, not the former, is the only correction that makes sense in light of witness Schaefer’s testimony, Time Warner’s objections, and the Presiding Officer’s Ruling. Accordingly, the third “Second Segment” entry in Attachment D-2 should apparently be changed as follows:

page 19, line 11 through page 25, line 16 (Tr. 6/1937, line 11 through Tr. 6/1943, line 16).

Conclusion

McGraw-Hill accordingly requests that the Presiding Officer clarify Attachment D-2 of Ruling R2006-1/75 by making the foregoing corrections to the Second Segment entries on Attachment D-2 in order correct material typographical errors and conform Attachment D-2 to the intent of the Ruling.

Respectfully submitted,

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