

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

POSTAL RATE AND FEE CHANGES, 2006

Docket No. R2006-1

**INITIAL BRIEF OF
AMERICAN BUSINESS MEDIA
ON
PERIODICAL RATE DESIGN**

(December 21, 2006)

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**“STRATEGY SHOULD EVOLVE OUT OF THE MUD OF
THE MARKETPLACE, NOT IN THE ANTISEPTIC
ENVIRONMENT OF
AN IVORY TOWER”**

Al Ries

Author and marketing strategist

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What does the prologue to this brief have to do with this case? Quite a bit, actually. The Commission is faced with a triad of Periodicals rate proposals: those of the Postal Service, Time Warner and, jointly, Magazine Publishers of America and the Alliance of Nonprofit Mailers. Then there's American Business Media, found wandering somewhere in the middle of that triangle, trying to figure out how the interests of all of its members—those on pallets and those that cannot get there—can be advanced and protected as inevitable changes to periodicals rate design are implemented.

Although there are differences among these four parties, the differences produce more smoke than fire.¹ All agree that rate design changes to promote the presentation of less costly mail are appropriate and all—giving Time Warner the benefit of the doubt—recognize that it is necessary to temper such changes with mercy for the thousands of publications that, through no fault of their own, cannot escape the dreaded mail sack.² And that's where the prologue fits in. To understand the reasons why

¹ American Business Media's differences with MPA and ANM do not include issues related to city carrier costs and mail processing cost variability, discussed in the rebuttal testimony of Antoinette Crowder (MPA et al.-RT-1) and Stuart Elliott (MPA et al.-RT-2) that American Business Media co-sponsored.

² See 39 U.S.C. § 3622(b)(4) and (8).

periodicals are prepared the way they are, why most publications are mailed in sacks despite the cost and non-cost advantages of pallets and why, in a variety of relevant areas, what makes sense in theory makes none in practice, one has to look at the periodical production and distribution functions from the inside out, not from the outside in. To assist the Commission with that necessary task, American Business Media has presented the expert testimony of three publishing professionals, each with decades of hands on experience dealing with printers, arranging for transportation, deciding how to best prepare the mail and reacting to the impact of increases in postal costs. They have been on the front line of the constant battle to weigh postage costs, speed of delivery, editorial closing times, the demands of editors and art directors and a host of issues the combination of which is crucial to an understanding of how, in practice not in theory, postage rate design and level changes affect publishers.

In sharp contrast, it appears from their testimony and cross-examination that not one of the four witnesses for Time Warner and MPA/ANM has ever spent a single day, or a single minute, in the employ of a periodical publisher, or a printer. Rather, they are, by education, a mathematician,³ a physicist,⁴ and two economists⁵ who, to be sure, have a world of insight into the unique economics of postal costs, but their view is gained from the lofty plane of theory rather than the more useful planes of the publishing office and the printing plant. American Business Media does not for a minute question their skill or their numerical, economic or theoretical premises or conclusions,

³ Halstein Stralberg, TW-T-1 at 1.

⁴ Sander Glick, MPA/ANM-T-2 at 1.

⁵ Rita Cohen, MPA/ANM-T-1 at 1, and Robert Mitchell, TW-T-1 at 1.

lacking the resources even to make an attempt. But American Business Media does question in meaningful ways the application of their elegant yet sterile theories and conclusions to the real world of periodicals publishing and distribution.

The contrast between the real and the theoretical will be the focus of this initial brief. But before proceeding with that task, American Business Media would point out a most compelling example of the disconnect between the real and the theoretical, an example that goes to the heart of this case.

MPA/ANM take great pains to convince the Commission that periodical mailers need a shove toward “efficiency” in the form of price signals, to which it is contended they will respond, and that the proposal they advance sufficiently mitigates the possible harm to smaller circulation mailers that might result from more aggressive or less compassionate changes (e.g. MPA/ANM-T-1 at 7-8, 24-25). Their initial brief will no doubt seek to minimize what they expect will be American Business Media’s, and possibly the Postal Service’s, counter-position that mitigation is warranted. In other words, MPA/ANM thus far argue and, we can confidently predict, in their initial brief will argue, that the impact of their proposal on small and medium sized publications (which on average is somewhat greater than the impact on these publications under the Postal Service proposal)⁶ is reasonable, fair, equitable and acceptable.

Contrast that theory with the far different message delivered by ANM to its members. ANM’s November 17, 2006, “Alliance Report,” quoted by American Business

⁶ See Response of MPA/ANM Witness Glick to Presiding Officer’s Information Request No. 19, Tr. 10,374-79.

Media witness Bradfield (ABM-RT-1 at 10), stated (bold type in original, underlining added):

Unfair penalty for mailers who cannot prepare Periodicals mailings on pallets.

The pricing proposal includes a new \$0.85 Outside-County Container Rate. An Alliance member organization is working with its publisher to prepare as efficiently as possible. These efforts have not come without cost to the nonprofit. However, it is impossible to prepare several of its titles on pallets. The nonprofit is facing a 13 percent to 17 percent increase in postage alone. Add to that the penalty for its inability to prepare pallets and the nonprofit may not be able to continue providing its members with quality publications.

In practice, apparently, an increase in postage of 13-17% is an “unfair” penalty, in fact a life-threatening one, for a mailer doing what it can to prepare mail efficiently but that cannot move to pallets. Yet, based upon the sample used by all parties, under the MPA/ANM proposal, 35 (or 35%) of the “medium” publications, would experience increases of at least 13%, as would 93 (or 87%) of the “small” publications Tr. 10,374-79). In fact, 62 (or 30%) of the combined medium and small publications would suffer increases of greater than 17%--which is the top of the ANM-announced “unfair” range.

Though unfair in practice, these high increases are apparently fair in theory, since ANM’s own theory witness Glick testified that an increase of 19% (which is higher than the top of the ANM “unfair range”) for 18% of the total universe of publications would be acceptable, even if no mitigation measures are available to these publications. Tr. 300.⁷

⁷ Note also that the average rate for small publications under the MPA/ANM proposal is higher than the average rate for small publications under the “unfair” USPS proposal. Tr. 12,096.

The Three Rate Proposals

American Business Media will leave it to their proponents to describe in detail the ways that they wish to change the present periodical rate design to encourage a continuation and possible acceleration of the ongoing shift from costly-to-handle sacks to more economically handled pallets. From American Business Medias' perspective, they stack up like this:

(1) The Postal Service proposal adds a modest container charge and destination entry discounts for editorial pounds, eliminating the per-piece pallet discount. It appears that, of the three proposals, the Postal Service design would increase the present incentives and rewards by less than the two alternatives, but it would also impose the least harsh penalties on the many thousand small publications that cannot move to drop shipped pallets.⁸ Of the three, it is the most balanced and the most compliant with both statutory requirements and practical realities.

(2) The MPA/ANM proposal does not add a container charge to the rate design, but it does add both destination entry discounts and greater pass throughs of alleged cost differentials, such as through a separate, 5-digit pallet discount, so as to create both greater incentives/rewards than the Postal Service proposal and greater penalties for unfortunate sack dwellers. See Response of MPA/ANM Witness Glick to Presiding Officer's Information Request No. 19, Tr. 10,374-79.

(3) Time Warner's proposal is easily the most drastic, essentially resurrecting the "grid" approach it presented in its complaint proceeding, Docket No. C2004-1, but without the zoning of the editorial pound charge. It would create rate cells for bundles

⁸ American Business Media will later fully explain why such movement is not possible.

and containers, added to the existing cells for pieces and pounds, and would in one fell swoop reduce to 100% the passthroughs for certain worksharing activities—most notably barcoding and sortation to five digits—that have been greater than 100% in order to avoid the very rate shock that implementation of the Time Warner proposal would produce. Of the three proposals, the Time Warner proposal creates the greatest benefits for the very large mailers (like, oh, Time Warner)⁹ and the greatest penalties for the smallest.

The American Business Media Testimony and Position

With only the Postal Service's request having then been presented, American Business Media offered the direct testimony of Nick Cavnar (ABM-T-1) in the first round of intervenor testimony. Mr. Cavnar's thirty years in the publishing industry (which, as we pointed out above is exactly thirty more years than all of the Time Warner and MPA/ANM witnesses combined) has given him vast experience with more than 180 magazines at several publishers, and with publications ranging in size from 15,000 to 200,000 (id. at 1-2). He presented what was, and still is, American Business Media's basic position in this case (id. at 2):

On the one hand, American Business Media recognizes that some changes in the existing rate design to provide both incentives and rewards for worksharing by Periodicals mailers are inevitable and, in fact, in many respects desirable. For this reason, American Business Media has for years been encouraging its members to move out of sacks by co-mailing and co-palletizing, whenever possible, as was brought out in the Time Warner complaint case. It has done so at meetings, in communications with members and through, most recently, the impending release of a DVD portraying the benefits of moving out of sacks.

⁹ Just three of Time Warner's publications, with their already very low postage cost per copy, would save, collectively, more than \$6,000,000 per year under its proposal, versus that of the Postal Service Tr. 10,620). That \$6,000,000+ would be paid by smaller publications.

He introduced data, later updated by witness Bradfield (ABM-RT-1), that indicated that the results of these efforts have been “encouraging” (ABM-T-1 at 3). But, he added, it is necessary, especially for periodicals, to look at more than “efficiency” when assessing the desirability and acceptability of periodicals rates, because “the Periodicals class is about more than efficiency” (id. at 5). The rate preference long provided to periodicals is to promote a broad and diverse periodicals class, so care must be taken to assure that, to the best of the rate setter’s ability, rate changes do not produce disproportionate increases for small publications, or widely dispersed publications, or, for that matter, for very large publications.

Moreover, Mr. Cavnar correctly pointed out (id. at 6-7), one concept missing from the dialogue on impact in the Postal Service case (just as it is missing from the Time Warner and MPA/ANM cases) is the cents-per-copy impact, as opposed to the percentage impact. He agreed that percentage impact should continue to play an important role in assessing postage rates, “but not to the total exclusion of cents per copy. After all, dollars count.” He cited the price increase impact information released by the Postal Service in May, along with its filing. As shown at Tr. 1,627-30, the “news weekly” paying 17.9 cents per copy (which is very close to the 17.67 cents per piece postage for Time in the complaint docket, Tr. 1789 in Docket No. C2004-1), will see an increase of 11.7% from the rates proposed here, which amounts to 2.1 cents per copy. By contrast, the 8-ounce, 5-digit presort, sacked publication, which Mr. Cavnar explained is “a lot like many ABM-member publications,” would see a 14% increase in

its present 33.4 cents per copy, but of 4.7 cents per copy, more than twice the increase for the news weekly.

Mr. Cavnar used data produced in Docket No. C2004-1 to show that the “hypothetical” results in the Postal Service’s samples are not atypical. In the complaint case, American Business Media witness McGarvy (Tr. 1,785 in that docket) contrasted the per-copy postage costs of Entertainment Week (17.2 cents), People (19.12 cents), Sports Illustrated (18.73 cents) and Time (17.67 cents) with the postage costs of Ad Age’s Creativity (30.14 cents), a periodical of similar weight and editorial content with circulation of 31,000 and palletized to the extent it can be. Mr Cavnar recognized that all of these costs were increased by roughly 5.8% in January, but with that caveat, he pointed out that Ad Age’s Creativity currently pays 36.6 cents per copy and that under the proposed rates it would pay 41.4 cents, an increase of 13.08% or 4.8 cents. This increase measured in absolute terms is more than twice as large as the “news weekly” increase estimated by the Postal Service in this case.

The disparity between the cents per copy rate increases proposed by the Postal Service on large and small publications, as well as the very substantial exacerbation of the problem that would result from the Time Warner proposal, can be shown in dramatic fashion from data provided by Time Warner at Tr. 10,539-40. The following table was prepared from that data, and it shows the cents per copy impact of both proposals on Time Warner’s three largest (in terms of annual volumes) and three smallest publications:

**EFFECT OF TIME WARNER RATE PROPOSAL
ON LARGEST AND SMALLEST TIME WARNER PUBLICATIONS
(TR. 10,539-40)**

Three Largest ^{1/}	Per Issue ^{2/} Circulation	Present Postage Per Piece	USPS Proposal	Change	TW Proposal	Change
#1	4,154,472	16.4¢	18.6¢	+2.2¢	17.1¢	+0.7¢
#2	3,138,235	16.4¢	18.5¢	+2.1¢	17.1¢	+0.7¢
#3	2,346,184	20.7¢	23.2¢	+2.5¢	22.2¢	+1.5¢
Three Smallest						
#31	29,055	33.2¢	36.2¢	+3.0¢	41.2¢	+8.0¢
#40	28,355	38.8¢	43.8¢	+5.0¢	44.6¢	+5.8¢
#42	24,208	49.3¢	55.6¢	+6.3¢	55.9¢	+6.6¢

¹ Based on annual pieces—in terms of pieces per issue, these weeklies are three of the largest four.

² Main file only.

As seen in the table, the cents-per-copy increases under the Postal Service proposal for the publications with millions of copies per issue are 2.2, 2.1 and 2.5 cents per copy. For the smallest circulation publications, the increases are 3.0, 5.0 and 6.3 cents per copy. That differential is much greater under the Time Warner proposal, which would produce increases of only 0.7, 0.7 and 1.5 cents for the largest publications, and 8.0, 5.8 and 6.6 cents for the smallest.

In this connection, American Business Media notes, as did Mr. Cavnar (ABM-T-1 at 7), that the suggestion that one should not restrict impact analysis to percentages is shared by the Postal Service. During cross-examination by counsel for the Parcel Shippers Association, Postal Service witness Keifer was asked about percentage constraints on rate increases. He responded (Tr. 1,118):

As I said earlier, when you look at impacts you have to look at not just a percentage increase or not just an absolute increase, you have to look at both of them together. That's always the way we look at it.

In this light, Mr. Cavnar turned to the best data produced by the Postal Service at that time showing the impact of its proposal on a wide range of publications and presented the data as Exhibit NC-1, a three-page spreadsheet.¹⁰

The first page of that exhibit displays the effect of the proposed increase on the "large" publications that have "high" density and average pieces per sack of at least 30 and an editorial component of 60% or less. Mr. Cavnar chose the "high density" limitation to allow consideration only of the more typical large-volume publications that drop ship, although he noted that this selection also would probably include local

¹⁰ Although different data was later presented for these publications by the Postal Service to reflect implementation of the 24-piece sack minimum, the conclusions drawn by Mr. Cavnar from the earlier data remain equally valid.

publications such as city magazines. He eliminated high-editorial content publications in order to include only the most typical billing determinants for consumer and business publications. The sack size constraint was imposed to reflect some estimate of the impact of the 24-piece minimum rule that the Postal Service imposed this year but that was not at that time reflected in the Tang data. On this and subsequent pages, he also added a column displaying the cents-per-piece postage change.

The second page includes “medium” size publications with low density, which reflects the witness’s attempt to portray the results for publications that do not (and perhaps cannot) co-mail or co-palletize. The same sack and editorial content constraints were imposed. The third page includes “small,” low density publications, again to reflect the impact on non-co-palletized/co-mailed publications, with the same sack size and editorial content limits.¹¹

The results, based upon the (unweighted) averages shown in the exhibit, reveal the much harsher impact of the proposed rates on small and medium size publications that are not drop shipped than on high density, large publications. For the large publications, the average percentage increase is 10.26%, and the average absolute increase is 2.8 cents per copy. For the medium publications, the average percentage increase is 13.27%, and the average absolute increase is 5.2 cents per copy. For the small publications, the average percentage increase is 14.45%, and the average

¹¹ Mr. Cavnar also presented data (Exhibit NC-2 and ABM-T-1 at 8-9) demonstrating that the application of the high or low density content constraint and the editorial limitation did not have a material effect on the relationships or his conclusions.

absolute increase is 6.4 cents per copy.¹² One reason for the larger per-piece increases for the smaller publications is that, with the current worksharing incentives, they already pay a higher per-piece cost than the larger circulation publications that can take advantage of the associated discounts.¹³

Mr. Cavnar concluded (ABM-T-1 at 9) that “from the data submitted by the Postal Service, the expressed desire of the Commission to see movement in the Periodicals rate design, the impact of the Postal Service’s proposal and what appears to be the increasing availability of co-palletizing and, to a lesser extent, co-mailing. . . the Postal Service has submitted a proposal that, as to rate design, likely falls within a zone of reasonableness.” The Postal Service, he added, “has attempted to provide continuing incentives for movement out of sacks and drop shipping while affording some level of protection to those that cannot do so, such as many small weeklies, some tabloid and polywrapped pieces, and publications the volumes of which remain too small to be attractive candidates.” As shown in the rebuttal testimony presented by American Business Media, the same cannot be said for the proposals by Time Warner and, to a lesser extent, MPA/ANM.

American Business Media rebuttal witnesses Lou Bradfield and Joyce McGarvy each has more than 25 years of experience in the periodical industry, most of it with small and medium circulation publications, although Mr. Bradfield has also worked with

¹² MPA’s survey of its own members, which was unfortunately limited to 58 large publications (greater than 100,000), 5 medium publications (15,000 to 100,000) and 0 small publications (Tr. 10,411-13), limited as it was, produced similar results, with an average increase for the medium group nearly 50% larger than the average increase for the large group—15.06% versus 10.77% (Tr. 10,414).

¹³ Time Warner witness Mitchell agreed that those now paying less can better afford rate increases than those paying more (Tr. 10,503).

a very large circulation magazine (TV Guide) and in the printing business. Tr. 12,060-61; 12,175-76. Each also has substantial experience with Postal Service/industry groups, with Ms. McGarvy currently serving as the Industry Chair of the Mailers Technical Advisory Committee (MTAC). Id. They both know first hand what it is like to mail publications that simply cannot be moved out of sacks, notwithstanding the sophistication and atypically large number of periodicals published by their respective employers. If they cannot persuade a printer to co-mail issues or versions with fewer than 5,000 pieces, “the small publisher would stand no chance” (Tr. 12,064). Their testimony, described in greater detail below, compels a finding that many smaller circulation publications, tabloid publications and small circulation weeklies cannot now and will not soon be able to move from “inefficient” sacks to “efficient” pallets and that a rate design that seeks to “encourage” such movement with price signals will impose much pain with no gain.

Mr. Bradfield first (Tr. 12,061) noted that a Time Warner witness in Docket No. C2004-1 (Schick at Tr. 430 and 504 in that docket) and both MPA/ANM witness Glick (Tr. 10,298) and Time Warner witness Mitchell (Tr. 10,518) in this one agree that today’s rates and rate design provide incentives for co-palletizing and co-mailing and the resulting reduction in sack usage. Witness Bradfield presented as Exhibit LB-1 the results of an American Business Media survey for the 360 of its member publications that responded to a request for data this summer. As shown there, about 1/3rd of the publications are predominantly sacked, and they account for only about 1/4th of the total mailed volumes. In other words, about 74% of the 251,000,000 pieces are associated with publications that are not predominantly sacked. Exhibit LB-2.

Five years ago, Mr. Bradfield noted (Tr. 12,062), American Business Media conducted a more extensive survey of its members' mailing characteristics. In the 2001 survey, there were 161 titles responding, but the circulations were larger, and they accounted for 174,000,000 pieces annually. Of those pieces, 65% were on pallets, but the actual increase in palletization since then, the witness explained, is significantly larger than the apparent 9 percentage point gain. The earlier survey included three very large (for American Business Media) circulation publications that were not included in the more recent data. Those three accounted for 41,000,000 of the annual pieces, and as might be expected for larger circulation publications, 38,000,000 of those pieces were on pallets. Of the remaining publications, which more closely resemble the 360 publications in the recent data, 57% of the pieces were palletized. Therefore, it appears from this data that, in five years, the amount of palletization of the typical small to medium sized American Business Media member publications has increased by about 30%, or from 57% of the mail pieces to 74%. MPA/ANM witness Cohen is right when she says that co-mailing "has really grown" (Tr. 10,184).

Despite this growth, however, Mr. Bradfield stated (Tr. 12,062), there are "large and important segments of the periodicals industry that cannot co-mail or co-palletize in order to get out of sacks and will not be able to in the next few months and possibly years." American Business Media's specific concerns, as explained in Mr. Bradfield's and Ms. McGarvy's testimony, is primarily focused on weeklies, the very small publications, tabloids, the small printers with relatively few publications and others that "cannot turn a switch or run a program to change their mailing characteristics or the way that they prepare mail" (Tr. 12,062).

Mr. Bradfield (at Tr. 12,062) cited the testimony of Time Warner witness Schick in Docket No. C2004-1, who agreed there that, even with all of the resources of Quad/Graphics and its history of co-mailing, Quad/Graphics' clients have valid reasons for not being able to co-mail, including daily or weekly production schedules that would be difficult to adjust or expand, differing trim sizes, printed polywrap and multiple insertions (Tr. 414 in Docket No. C2004-1). Witness Schick stated (Tr. 425 in Docket No. C2004-1) that, even with the multiple and sophisticated co-mail pools run by Quad/Graphics, weekly publications in co-mail pools would risk missing critical entry times. From his own experience, Mr. Bradfield confirmed Mr. Shick's conclusions about the impediments to co-mailing and co-palletizing and stated that they remain valid today (Tr. 12,063). And, as Mr. Bradfield concluded (*id.*) "[n]o one has introduced informed testimony in this case even hinting to the contrary."¹⁴

Co-mailing takes volume. It is no accident that, according to testimony in Docket No. C2004-1, cited and relied upon in this docket (Tr. 12,063-64) and the latest that is available, nine out of Quad/Graphics' ten co-mail pools per month then contained one participant with at least 100,000 copies, and eight of those ten had a participant with at least 250,000 copies (Tr. 391 in Docket No. C2004-1). Of the 105 titles that participated

¹⁴ Mr. Bradfield stated (Tr. 12,063) that, as a theoretical proposition, even a printer printing four small publications a month can run them on a 4-pocket Sitma and co-mail, but it could not do so as a practical matter. For one thing, he said, they would all have to print at roughly the same time of the month (unless some agreed to sit around for up to a couple of weeks). For another, the ability to make four 20,000 circulation publications look for postal purposes like one 80,000 publication is unlikely to lead to substantial improvement in the ability to avoid sacks and the worst of the proposed rates, since that volume is typically not enough to make many, if any, pallets. For even smaller publications, there is even less to gain.

in the Quad/Graphics co-mail pools, only 30 had circulation less than 100,000, and more than half had circulation in excess of 200,000.

The typical circulation numbers needed to form an effective co-mailing pool, Mr. Bradfield explained—noting (Tr. 12,063) that Quad/Graphics, for example, almost always has at least one publication with circulation larger than 100,000, and typically has at least one with a circulation greater than 200,000 in a pool—“are impossible for shorter-run printers, and pools of that size would be available to shorter-run printers only if they were very large companies printing hundreds of titles and co-mailing with many pockets.” He agreed (Tr. 12,064) with MPA/ANM witness Cohen that co-mailing and co-palletizing are becoming increasingly available for shorter run publications, “but there is a very long way to go before that availability is anywhere near universal.”¹⁵

Mr. Bradfield supported these conclusions with reference to his actual, real-world experience at VNU Business Media, where he is the Corporate Distribution Director (Tr. 12,060). He testified (Tr. 12,064) that VNU is a relatively large business publications mailer, with 40 titles mailing about 18,100,000 copies annually. Of the 34 periodical titles, VNU co-mails 14 and co-palletizes 8. However, the company is not able to procure either service for a good many of its copies, “especially tabloids and polybagged publications.” In addition, he explained, “the publications world is moving more and more in the direction of versioning, by which I mean that a publication to

¹⁵ Typical of co-mailing shorter run publications—monthlies, not weeklies—is the experience of American Business Media member Hanley Wood at Donnelley. It takes Donnelley seven full days, with the co-mail line running 24 hours a day, to complete one pool with between 1.5 million and 3 million pieces. There are restrictions on participation, such as size of the list and the number of versions. As a result, Hanley Wood, which does some co-palletizing on all of its magazines, is able to co-mail only 2 of its 15 publications. See Tr. 12,178.

survive must make available to its advertisers editions broken down geographically and/or demographically.” When VNU does so, he added, it is in effect creating some or many small publications out of one larger one. In VNU’s case, approximately 50% of its publications have multiple versions, and in many cases those versions contain fewer than 5,000 pieces.

Despite the overall size of its printing needs, VNU has found that its printers will not co-mail versions that small (Tr. 12,064). It urged one of its printers, Banta, to co-mail down to 2,500 pieces, but it refused, although it eventually agreed to co-mail down to 5,000 pieces (*id.*).¹⁶

Apart from the low numbers produced by versioning, VNU also has three periodicals publications without versioning that mail fewer than 3,000 copies per issue, and these cannot be co-mailed, nor can its seven weeklies and one daily that are too time sensitive to wait for a co-mailing or co-palletizing pool (Tr. 12,065).¹⁷ In many ways, these publications are far more typical of the Periodicals class as a whole than are the relatively few publications with sufficient volumes to palletize on their own.

Finally with respect to limitations of the availability of co-mailing, Mr. Bradfield (at Tr. 12,065) pointed to his Exhibit LB-5, in which mega-printer Quebecor World touts the fact that it then (as of October 11 of this year) was co-mailing 450 titles. “That is good,” Mr. Bradfield conceded, “but the industry has a very long way to go before it can co-mail

¹⁶ MPA/ANM witness Glick agreed that some printers apply a 5,000-piece cut-off (Tr. 10,422). He was correct. For example, Exhibit LB-3 is a page downloaded from the Internet in which Quebecor World explains that candidates for its “Express Collation Mailing System” for co-mailing may not have a version under 5,000 copies and may not have more than two versions between 5,000 and 10,000 copies.

¹⁷ The challenges faced by time value publications were addressed by American Business Media rebuttal witness McGarvey, whose testimony is discussed below.

the thousands of shorter run publications now in sacks.” The MPA/ANM response to this claim is fascinating and instructive. During cross-examination of Mr. Bradfield, counsel for MPA/ANM asked the witness about an expansion of co-mailing facilities at Quebecor World that was announced shortly after the testimony was filed (Tr. 12,104-06). Mr. Bradfield indicated that he had “heard something of it,” and counsel for MPA/ANM introduced as Cross-Examination Exhibit MPA-X-1 a press release from Quebecor World that it is increasing its co-mailing capacity by 50%.

American Business Media fails to see how that press release in any way undermines Mr. Bradfield’s testimony about the very limited co-mail capacity available to the 20,000 or so publications that could benefit from co-mailing. In fact, it fully supports that testimony. When an increase in co-mailing capability that will enable up to a whopping 225 additional publications¹⁸ to co-mail next year (depending upon the number of versions and other factors) justifies a three-page press release, that speaks loudly about the ability or lack thereof of the printing industry to accommodate the thousands of additional publications that proponents of drastic changes in the Periodicals rate structure simply assume can and will co-mail.¹⁹

American Business Media rebuttal witness McGarvy reinforced Mr. Bradfield’s testimony, focusing on the constraints placed upon time value, news publications.

¹⁸ Fifty percent of the existing capability of 450 titles (Exhibit LB-5).

¹⁹ Perhaps the limits on the capacity for co-mailing explain why Time Warner has a 30,000 piece supplement that is mailed in sacks and why, annually, 4,000,000 copies of Time magazine are mailed in sacks (Tr. 615-16). Time Warner’s rate witness admitted that he did not seek information on the co-mail capacity of printers (Tr. 10,471).

She explained (Tr. 12,176) that “timely editorial and news are crucial to our publications, especially our 19 weeklies and bi-weeklies” so that “we do not close the final editorial pages until the close of business on Friday. The publications all have a Monday cover date, and it is our intent is to have the publication delivered to the readers on Monday.”

Despite the needs of these time value publications, Crain does what it can to reduce postal costs, participating in two separate co-palletization operations at two different printers every Friday night. Because of the need for speed, however, Crain publications can co-palletize only with other Crain publications, because that is the only way that it can avoid being subject to scheduling problems caused by others (Tr. 12,176-77).

Ms. McGarvy testified (Tr. 12,177) that Crain began co-palletizing its publications in 1987, before there was a formal co-palletization program and before there were any discounts for palletizing, in order to expedite the delivery of its publications. Because its publications are time-sensitive, however, it is able to co-palletize only to destinations that are close enough for it to reach using ground transportation; there are some destinations where the company has no choice except to use air freight, and for these destinations it must use sacks (Tr. 12,177).

Ms. McGarvy explained (*id.*) that Crain cannot co-palletize these destinations for several reasons, the most important of which is that pallets will not fit on narrow-bodied aircraft, which are the only aircraft available in some markets. In addition, even if a wide-body plane is scheduled, she added, there are sometimes last-minute changes in equipment that would leave the pallets stranded.

Crain understands, Ms. McGarvy said (id.), that it would save money if it could co-mail its weekly publications, but it has not been able to do so as a result of time constraints and the inability to find a vendor that can accomplish the co-mailing and meet the dispatch requirements of its time value publications. In fact, she added (id.), “[w]e have asked both of our major printers, which are industry leaders, to find a way for us to co-mail our weekly publications, but neither printer has been able to find a way to make that happen. Other American Business Media members with weekly publications face the identical problem.”

American Business Media understands that there is one example on the record of the co-mailing of weekly publications: the co-mailing of U.S. News with Information Week (USNews-T-1). Ms McGarvy explained (Tr. 12,177-78) that “this is surely a special case that has nothing to do with our or other medium and small circulation weeklies and bi-weeklies.” First, she noted (Tr. 12,178), this is only a two-publication “pool” consisting of one publication with a circulation of nearly 2,000,000 and one with 400,000, citing Tr. 10,197. She went on to say (Tr. 12,178) that, even though it is apparently possible to coordinate these two, large publications (citing Exhibit JM-1), “it is not possible to coordinate the much larger number of separate weekly publications with circulations of 50,000, or 5,000 that would be necessary to make up a co-mail pool of sufficient size.” In fact, the Quad/Graphics co-mailing of these two very large weeklies is so unusual and so noteworthy that, according to witness Cohen (MPA/ANM-T1 at 14), it is featured on the Quad/Graphics web site.

Ms. McGarvy next turned her attention to tabloid-sized publications, which to Crain and its readers signify news content and very high time value. Co-mailing tabloids

presents a special problem, she said (Tr. 12,178), because, with their larger trim size, they cannot be co-mailed with standard-size publications. MPA witness Cohen agreed that there is no co-mailing of tabloids now (Tr. 10,150). In response to witness Stralberg's suggestion that Donnelley has recently added the capability to co-mail tabloids (Tr. 10532), Ms. McGarvy surmised (Tr. 12,178-79) that he may have been referring to Donnelley's discussions with Crain in early 2006. Crain had asked Donnelley to do a study of the Crain titles, which include standard-size and tabloid-size publications, to determine if it could co-mail the tabloids (Tr. 12,179). Donnelley said that it could re-configure one of its co-mail lines to handle tabloids, "but that co-mailing would require us to move our dispatch schedule back 24 hours. We just can't do that" (id. and Tr. 12,186-87). To ask a news-filled publication destined for delivery to offices on Monday to cut off its news coverage on Thursday would be worse than asking the New York Times to close editorial for its Sunday edition on Friday, because the late news would be delayed for a full week, not a day.²⁰

The result of the Crain's inability to co-mail and the need to mail many copies in sacks is that it now pays higher postage than it would if it could co-mail or co-palletize more. Unfortunately, under Time Warner's and MPA/ANM's rate proposals, even Crain's co-palletized publications would be worse off than under the USPS proposal, as Ms. McGarvy showed in Exhibit JM-2 (see also Tr. 12,179). As shown there, the increase would be in excess of 14% for all 19 publications under the MPA proposal (compared with only 4 under USPS's), with five publications facing increases of greater

²⁰ During cross-examination, Mr. Bradfield reinforced Ms. McGarvy's testimony regarding the unavailability of co-mailing for tabloids and weeklies, stating (Tr. 12,108) that "nobody has a tabloid pool and nobody will even talk[] about a weekly pool."

than 19% (compared with 0 under the USPS proposal). The Time Warner proposal would increase rates for each of the 19 by more than 14% and 5 by more than 19%, of which 4 would be more than 20%, with a maximum of 28.19%.

Ms. McGarvy explained (Tr. 12,179-80) that she was recently asked by another American Business Media member, PennWell, to run the impact numbers on its publication Oil & Gas Journal, a weekly publication with a circulation of a little more than 18,000. Its printer, Brown Printing, makes up pallets where it can, and managed in the mailing analyzed to produce 4 pallets with 406 bundles and 5,950 pieces. It also produced 247 sacks with 979 bundles and 12,382 pieces. Under the Postal Service proposal, its postage would increase by 13.51%. Under the MPA/ANM and Time Warner proposals, the increases would be 17.45% and 17.47% respectively.

Apart from the practical impediments to co-palletizing and co-mailing for many publications identified by Mr. Bradfield and Ms. McGarvy, Mr. Bradfield identified another problem with “simply assuming that co-mailing will allow small mailers and others that cannot otherwise move out of sacks to escape much of the burden that the proposed rate designs would cause is the cost to the publisher of obtaining co-mailing or co-palletizing service, a matter that Time Warner and MPA/ANM studiously avoided. See, for example, Tr. 10,476 (Mitchell) and Tr. 10421 (Glick).” (Tr. 12,066.) He stated (id.) that VNU began co-mailing nine of its titles in 2004 and now co-mails fourteen, and it experiences gross postage savings of “at most about 15% to 20%, with the added front-end costs eroding about half of that number.”

Yet both Time Warner and MPA/ANM ignore these heavy, additional front-end costs in their impact discussion, so that the naked assertion that mailers can avoid the

very large cost increases that their proposals would cause is unsupported and not testable, even if and to the extent that co-mailing and co-palletizing might soon become available to some of them.

This deficiency is crucial. MPA/ANM witness Glick admitted that to know whether a co-mail or co-pallet incentive is large enough to change behavior (as well as to measure impact on those that do respond), it is essential to know the costs to the mailer of participating in these programs (Tr. 10,259). Yet in an interrogatory response resulting from a redesignation from witness Glick to MPA/ANM witness Cohen, the latter testified that MPA did not obtain any information on the specific costs to mailers, or even a range of costs to mailers, passed on by printers and others for co-mailing, co-palletizing and drop shipping (Tr. 10,145; see also Tr. 10,162). Nor did witness Glick ask printers if they would pass through the greater postage savings that these practices would produce, or whether they would increase their charges for performing the services (Tr. 10,387).

Time Warner's witnesses were equally in the dark about how their theoretical incentives would compare with the very real costs. Its rate and policy witness, Mr. Mitchell, could recall no specific conversations with printers about the costs they incur or the costs they pass on when providing co-mailing or co-palletizing service (Tr. 10,462-63), even after the interrogatories seeking that information were posed (Tr. 10,505-06; see also Tr. 10,476). Similarly, the Time Warner costing witness—Mr. Stralberg—had no information on the costs of these services to printers or the prices for these services to mailers (Tr. 10,625).

From the data that are available, however, it appears that smaller circulation publications especially, the least likely to be able to change their mailing methods, will bear a heavy burden from the MPA/ANM and Time Warner proposals. MPA/ANM's response to POIR 19 (Tr. 10371-79) shows that 10% of the publications analyzed would suffer an increase of greater than 20% under its proposal (26 out of 259, which would translate into about 3,000 publications if the sample is representative of the whole), although none of the 52 "large" publications (100,000 or more) would. Three of the 100 "medium" publications (15,000 to 100,000) would see increases of 20% or more, but 23 out of the 107 "small" publications (less than 15,000) would see increases of that size. Meanwhile, 30 of the 52 large would be increased less than 10%, while only 3 of the 107 small would be so lucky.

The Time Warner proposal is far worse for all but the largest publications. Its response to POIR 19 (Tr. 10601-11) shows that 79 of the 259 publications, or 30% (which would translate to about 9,000 publications if the sample is representative), would see increases of 20% or more, some much more. Forty-one would see increases of greater than 25%. Only 3 of the 52 large publications would be so afflicted, while 28 of the 100 medium and 48 of the 107 small would suffer increases of 20% or more.

Although, as stated above, American Business Media recognizes that pieces in sacks will in the future pay more postage than similar pieces on pallets, just as they do now, the Postal Service should be doing more than simply raising rates to permit movement out of sacks. During cross-examination, witness Bradfield explained that publishers required to use sacks "have been begging" the Postal Service to develop or permit containers with capacities between those of sacks and pallets (Tr. 12,108). He

said that he had in mind something like “flat buckets that are used now and maybe on a bigger scale or something that would hold 50 to 100 pounds without being handled and thrown like a sack.”²¹ Moderate rate movement would increase the amount of co-mailing and co-palletizing that is accomplished, would afford limited protection to those that cannot avoid sacks and would give the Postal Service time to do its part.

Moreover, moderate rate movement, while perhaps not necessarily producing rates that are precisely in all respects reflective of cost differences among various types of Periodicals, is nevertheless permissible, because the Postal Reorganization Act requires consideration of fairness, impact and ECSI²² value along with costs. It is precisely because of these considerations that the Periodicals class in recent years has made only a token contribution to institutional costs, benefiting all members of the class, including those now pressing hardest for purely cost-based rates within the class.

Time Warner witness Mitchell said as much in Docket No. C2004-1, where he stated:²³

But there is more to ratesetting than notions of technical efficiency and lowest combined cost. Reality may not fit the scheme contemplated by the worksharing concept. Avoided costs can be difficult to estimate. Interest can center on a desire to deaverage rates in order to meet competition, reflect costs, and improve the allocation of resources. Concepts of fairness can be important. The economic efficiency of the rates may receive attention. Mailer sensitivity to the rate differences can vary, causing differences in the cross elasticities. In addition, the behavior of rates and costs over time can raise questions of continuity and the effects on mailers.

²¹ The Postal Service should also consider relaxing or eliminating its rule (Domestic Mail Manual section 8.5.2) that will not permit mixed ADC pallets but that requires bundles that cannot be prepared on an ADC pallet to be placed in sacks.

²² Educational, cultural, scientific and informational.

²³ Tr. 978 in Docket No. C2004-1, designated into the record in this case

Conclusion

The conclusion to this brief is essentially the same as the conclusion to Mr. Bradfield's testimony (Tr. 12,067-68). American Business Media and its members are not opposed to measured changes in rate design that have the dual effect of providing additional incentives to move from sacks to pallets and providing cost-based rate breaks to those already mailing on pallets. Our differences with other parties appear to center around the appropriate size of the incentives/rewards and the speed with which rates should be changed. We urge the Commission to recognize that thousands of small and medium size publications, and even some larger ones, do not now and will not in the near future have the option of mailing on pallets. It serves little purpose to create a demand for services well in excess of the ability of the industry to provide them. Great progress in co-mailing and co-palletizing has been accomplished and will be accomplished with a level of incentives at or near the level in today's rates. Pushing the incentive accelerator to the floor will do far more harm than good.

American Business Media submits that the Postal Service rate design proposal, or perhaps even a hybrid of the Postal Service and MPA/ANM rate design proposals (tweaked to preclude excessive increases), will produce postage rates for Periodicals that best meet the standards of the Postal Reorganization Act.

Respectfully submitted,

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