

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

Complaint on Electronic Postmark

Docket No. C2004-2

PRESIDING OFFICER'S RULING
CONCERNING PROPOSED TRANSCRIPT CORRECTIONS

(Issued October 6, 2006)

The Postal Service proposes several transcript corrections concerning the August 15, 2006 hearing on the testimony of its witness Foti.¹ DigiStamp opposes two of the proposed corrections, namely, the proposals to change “service” to “server” on page 227, line 16, and “to” to “through” on page 272, line 4.²

DigiStamp opposes the proposed corrections on several grounds. First, DigiStamp states that the proposed corrections are not consistent with witness Borgers's recollection of what was said.³ Second, DigiStamp argues that nothing in witness Foti's subsequent testimony supports adoption of the proposed corrections. Third, DigiStamp observes that the proposed corrections were filed after it filed witness Borgers's surrebuttal testimony, which quotes from the record, including, among other things, the language proposed to be changed. Finally, noting that the proposed corrections are more than four weeks after the hearing, DigiStamp suggests that the proposed corrections come too late. *Id.* at 1.

¹ Motion of the United States Postal Service for Adoption of Transcript Corrections with Regard to Hearing on the Testimony of Witness Foti, September 20, 2006.

² Response to Motion of the United States Postal Service for Adoption of Transcript Corrections with Regard to Hearing on the Testimony of Witness Foti, September 27, 2006 (DigiStamp Response).

³ Witness Borgers conducted the cross-examination on behalf of DigiStamp.

By motion, the Postal Service requests leave to reply to DigiStamp's response,⁴ concomitantly submitting a brief reply.⁵ The Postal Service Reply is intended to address any suggestion that its proposed corrections were prepared only after DigiStamp's surrebuttal testimony was filed. *Id.* at 1. To that end, the Postal Service indicates that intervening vacations of witness Foti and counsel subsequent to the August 15 hearing precluded an earlier submission. It states, however, that witness Foti had identified corrections before the submission of DigiStamp's surrebuttal testimony but that these corrections were not finalized until the day after filing of that testimony. *Id.* at 2.⁶

Ordinarily, proposed transcript corrections do not engender controversy in large part because they are intended to correct errors in transcription. On occasion, however, a proposed change may have a substantive effect, in which case, interested parties may evaluate it and, if having a different perception, take exception. Although not entirely clear, that appears to be the situation here.

On the surface, the parties' pleadings have some merit, but none is so persuasive as to compel a particular conclusion. Fortunately, however, this controversy need not be decided solely on the pleadings.

Hearings before the Commission are transcribed based on an audio tape. The Commission has obtained a copy of the audio tape of the August 15 hearing. A review of that tape regarding the testimony in question reveals that the witness stated "EPM server" not "service" as reported on page 227, line 16 of the transcript; and, on page 272, line 4, said "traveled to" not "through" as proposed to be corrected by the Postal Service.

⁴ Motion of the United States Postal Service for Leave to Reply to DigiStamp's Response to its Motion for Adoption of Transcript Corrections with Regard to Hearing on the Testimony of Witness Foti, September 27, 2006. This motion is granted.

⁵ Reply of the United States Postal Service to DigiStamp's Response to its Motion for Adoption of Transcript Corrections with Regard to Hearing on the Testimony of Witness Foti, September 27, 2006 (Postal Service Reply).

⁶ In addition, the Postal Service indicates that counsel discussed this matter with Mr. Borgers on September 15 'to avoid any possible misconception that the Postal Service was trying to sneak something in below the radar.' *Id.* at 1.

RULING

The Motion of the United States Postal Service for Adoption of Transcript Corrections with Regard to Hearing on the Testimony of Witness Foti, filed September 20, 2006, is granted, in part, and denied, in part. It is denied with respect to the proposed correction to page 272, line 4, and granted in all other respects.

Tony Hammond
Presiding Officer