

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

Complaint on Electronic Postmark

Docket No. C2004-2

PRESIDING OFFICER'S RULING ON DIGISTAMP'S MOTIONS

(Issued October 12, 2006)

Today, DigiStamp filed two motions in this proceeding. The first requests an opportunity to submit supplemental surrebuttal testimony;¹ the second requests that the due date for reply briefs be extended from October 13 to October 20, 2006.² The Postal Service opposes both motions.³ The Office of the Consumer Advocate (OCA) supports both motions.⁴

The motion to file supplemental surrebuttal testimony is denied. In its Motion to Supplement, DigiStamp contends that the Postal Service has, in its initial brief, introduced entirely new material. Specifically, it argues that the following statement in the Postal Service's initial brief is erroneous: "in this Microsoft application, use of the return receipt function is the purpose of the Microsoft application . . . but that is not the purpose of the USPS EPM."⁵ The Postal Service takes issue with this contention, noting, among other things, that DigiStamp has the opportunity to address its claim in its

¹ Motion of DigiStamp to be Permitted to Supplement the Surrebuttal Testimony of Rick Borgers (DigiStamp-SRT-1), October 12, 2006 (Motion to Supplement).

² Motion of DigiStamp to Postpone Filing of Reply Briefs Until October 20, 2006, October 12, 2006 (Motion to Postpone).

³ Reply of the United States Postal Service in Opposition to DigiStamp's Motions to Supplement Surrebuttal Testimony and to Delay Reply Briefs, October 12, 2006 (Postal Service Reply).

⁴ Office of the Consumer Advocate Response in Support of DigiStamp Motions to Supplement Surrebuttal Testimony and Delay the Filing of Reply Briefs by One Week, October 12, 2006 (OCA Response).

⁵ Motion to Supplement at 1, quoting Postal Service Initial Brief at 27 which cites Tr. 1/190.

reply brief, which, the Postal Service states, “is, in fact, one of the primary purposes of reply briefs.”⁶

DigiStamp has been given ample opportunity to develop the record in support of its complaint that the Postal Service’s electronic postmark is a postal service. It presented both direct testimony and, in response to the Postal Service’s rebuttal testimony, surrebuttal testimony. The record includes evidence regarding both the operational and technical nature of the Postal Service’s electronic postmark service. See, e.g., Tr. 1/57b-58B, 77-89, 174-86, 227-29 and 259-64; and DigiStamp-SRT-1 at 2-5. The evidentiary phase of this proceeding has concluded. DigiStamp has not demonstrated extraordinary circumstances which would justify the unusual relief it seeks. As it stands, the parties disagree. The Postal Service’s position is stated in its initial brief. DigiStamp (and OCA) have an opportunity to address that position fully in their reply briefs.⁷ That opportunity provides an adequate remedy.⁸

DigiStamp’s motion to extend the due date for reply briefs is granted. The Postal Service reiterates a comment from its initial brief urging an expeditious decision on this matter.⁹ While the Commission desires to conclude this proceeding in a timely fashion, a one-week extension will not appreciably affect its ability to do so. Moreover, the one-week extension may enable the parties to address more thoroughly claims and arguments made in opposing initial briefs, thereby further clarifying matters before the Commission and thus accelerating the Commission’s decision.

⁶ Postal Service Reply at 1.

⁷ OCA echoes DigiStamp’s claim that the Postal Service has raised new technical matters on brief. OCA Response at 1. The Postal Service’s statement on brief (at 27) is sourced to a specific passage in the transcript of witness Foti’s cross-examination. Parties at the hearing had the opportunity to seek clarification of the witness’ statement. Likewise, parties now have the opportunity in their reply briefs to demonstrate that the witness’ testimony is contrary to the purpose for which the Postal Service offers it on brief.

⁸ In recognition that DigiStamp has prosecuted its complaint *pro se*, it is cautioned that to the extent, if any, it may rely on extra-record material, it should ensure that such materials may be judicially noticed by the Commission.

⁹ Postal Service Reply at 2.

RULING

1. The Motion of DigiStamp to be Permitted to Supplement the Surrebuttal Testimony of Rick Borgers (DigiStamp-SRT-1), filed October 12, 2006, is denied.
2. The Motion of DigiStamp to Postpone Filing of Reply Briefs Until October 20, 2006, filed October 12, 2006, is granted.
3. The due date for reply briefs in this proceeding is October 20, 2006.

Tony Hammond
Presiding Officer