

Before The  
POSTAL RATE COMMISSION  
WASHINGTON, D.C. 20268-0001

-----  
Complaint on Electronic Postmark®  
-----

Docket No. C2004-2

PARTIAL OBJECTION OF DIGISTAMP WITNESS RICK BORGERS TO AN  
INTERROGATORY OF THE UNITED STATES POSTAL SERVICE  
USPS/DS-T1-9  
(June 5, 2006)

---

Pursuant to sections 26(c) of the Commission's rules of practice,  
DigiStamp hereby objects, on the grounds stated below, to the following  
interrogatory directed by the Postal Service to DigiStamp's witness Rick Borgers:

**USPS/DS-T1-9.** On unnumbered line 15 of page 8 of your testimony, you state that the USPS EPM is "almost always used in connection with a communication." What was the total volume of transactions using a DigiStamp time date stamp? What was the percentage of those transactions that involved a "communication." In your answer, please define the term "communication."

DigiStamp objects to the portion of this interrogatory that asks "What was the total volume of transactions using a DigiStamp time date stamp?" DigiStamp objects on grounds that it calls for commercially sensitive, proprietary and confidential information that is not relevant, much less necessary, to the resolution of any issue before the Commission.

As stated in *Presiding Officer's Ruling No. R2000-1/102*, July 31, 2000:

PARTIAL OBJECTION OF DIGISTAMP WITNESS RICK BORGERS TO AN  
INTERROGATORY OF THE UNITED STATES POSTAL SERVICE

The Commission's policy regarding the discovery of intervenors' commercially sensitive information has been reiterated in a series of rulings – *absent exceptional circumstances, such data need not be produced*. See POR R90-1/66, September 7, 1990, at 2 [“The Commission's policy is to refrain, absent exceptional circumstances, from compelling participants to file data that can reasonably be found commercially sensitive.” *Id.*]; POR R94-1/64, August 19, 1994, at 5. See *also* POR R87-1/148, November 10, 1987, at 2.

In prior rate proceedings PSA, among others, has requested data concerning UPS's domestic operations, e.g., volumes transported by air and ground transportation.... [M]otions to compel were denied not because the data requested were not relevant, but rather because PSA failed to demonstrate exceptional circumstances that would warrant the production of an intervenor's commercially sensitive information [citing POR R94-1/64 at 5; and POR R97-1/104 at 3].

Plainly, the data PSA seeks are commercially sensitive. ... The balance between disclosure and commercial sensitivity rests, initially, on whether the data are *essential* for the Commission's deliberations, including, importantly, evaluating the direct case of the party resisting disclosure. ... The Commission can resolve ... issues affecting Parcel Post Mail without recourse to the data PSA seeks. Consequently, ... disclosure is ... [not] required....

*Id.* at 2-4 (emphasis added; footnotes omitted). See *also Presiding*

*Officer's Ruling No. R2000-1/112*, August 10, 2000 (similar); *Presiding Officer's Ruling No. R2000-1/97*, July 25, 2000, at 8 (“disclosure of sensitive information when direct competitors in the marketplace are parties must be given careful consideration to protect the interests of each party”); *Presiding Officer's Ruling No. R90-1/29*, June 19, 1990, at 4 (a party's “strong interest in protecting its commercial secrets prevails, regardless of the availability of protective conditions”); *Presiding Officer's Ruling No. R94-1/22*, June 3, 1994, at 3-4 (“no evident justification for ordering its provision [even] under protective conditions”).

PARTIAL OBJECTION OF DIGISTAMP WITNESS RICK BORGERS TO AN  
INTERROGATORY OF THE UNITED STATES POSTAL SERVICE

The transaction volume information sought by the Postal Service is commercially sensitive, proprietary and confidential. DigiStamp has and will continue to provide transaction data in the form of percentages instead of absolute numbers, where possible, that describes how our customers use the time stamps. To comply with present demand for the transaction volumes, this information would enable the Postal Service to derive or closely estimate revenue information for DigiStamp's business. DigiStamp does not publicly release such commercially sensitive information, which it treats as confidential.

The Commission has long held that such revenue data constitute commercially sensitive information that participants will not normally be required to disclose, even under protective conditions, and especially to competitors.<sup>1</sup> See, e.g., *Presiding Officer's Ruling No. R94-1/64*, August 19, 1994 at 5 ("Numerical data revealing the disaggregated volumes, revenues and costs of a business' operations are clearly proprietary and commercially sensitive"); *Presiding Officer's Ruling No. R97- 1/104*, February 27, 1998, at 1-2 (agreeing that "revenue[] and costing data" are "clearly proprietary, and commercially sensitive"); *Presiding Officer's Ruling no. C99-1/23*, August 7, 2001, at 4 (similar).

Even if the transaction volume information sought the Postal Service had some relevance, it is certainly not *essential* to the Commission's resolution of any

---

<sup>1</sup> DigiStamp competes with the Postal Service in the digital time stamp market.

PARTIAL OBJECTION OF DIGISTAMP WITNESS RICK BORGERS TO AN  
INTERROGATORY OF THE UNITED STATES POSTAL SERVICE

material issue before it. Under the Commission's precedent, any attenuated  
relevance of such information is overborne by its commercial sensitivity.

Respectfully submitted,

---

Rick Borgers  
Lead Technologist, CEO  
DigiStamp, Inc.  
<http://www.digistamp.com>