

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

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Complaint on Electronic Postmark®

Docket No. C2004-2

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DIGISTAMP'S MOTION TO COMPEL RESPONSES  
TO INTERROGATORY DigiStamp/USPS-RT-1-2.3  
(August 2, 2006)

Pursuant to Commission's Rules of Practice, DigiStamp hereby requests that the Presiding Officer to compel the United States Postal Service witness Mr. Foti to answer interrogatory DigiStamp/USPS-RT-1-2.3. The United States Postal Service filed their objection to DigiStamp/USPS-RT-1-2.3 on July 31, 2006.

The question reads:

**DS/USPS-T1-2.** You state that "In fact, 97 percent of all Electronic Postmark users, since 2003, have been in conjunction with protecting content integrity of an electronic file—and not in the transmission of a message." (page 11, lines 12-14) DigiStamp previously introduced multiple exhibits that date back to the mid 1990's showing the USPS markets its EPM as a means for "secure communications."

...

3. Consider this: cell phones are designed and marketed as high-quality communications devices, up-to and until the Telco appears before the FCC. The clock that is included in this device is used 10 times more often that the calling function. Therefore, by your logic, could the Telco claim that these devices are immune from regulation: they are not phones; they are clocks? If your answer is no, then please explain.

The objection reads:

This question (part 3 of question 2) is objectionable because it assumes facts that are not in evidence (e.g., that clocks in cell phones are used 10 times more often the calling function), and because it calls for a legal conclusion. Witness Foti does not testify about the legal basis of FCC regulation.

The USPS objects because “[DigiStamp’s question] assume facts that are not in evidence”. DigiStamp’s question is posed as an analogy, a form of logical inference. The description of the analogy is not being entered as fact. The text of the analogy could add the word “if”: IF clocks in the cell phones are used 10 times more often than the calling function.

The USPS objects “because it calls for a legal conclusion”. The question is about an oddity whereby a vendor advertises one service while actually providing another. The question is about understanding why the USPS has publicly described its EPM as a tool for communication if, in fact, that is not what the customers use it for? The question asks for an explanation of the witness’s logic behind a central theme of the witness’s testimony. The question does not ask for a legal conclusion.

The USPS objects on the basis that “Witness Foti does not testify about the legal basis of FCC regulations”. DigiStamp’s questions does not require Witness Foti testify about the “legal basis of FCC regulations” and does not involve any legal issues about what the FCC’s decision might be. DigiStamp’s question is in the form of an analogy. The use of the FCC in the analogy is a logical inference of a

generic, government regulatory body. DigiStamp's question uses an analogy to better understand the witness's testimony whereby the EPM has been consistently described as a communication service up-to and until the service is described to the Commission.

For these reasons, DigiStamp requests that its motion to compel be granted.

Respectfully requested,

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