

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

Complaint on Electronic Postmark®

Docket No. C2004-2

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)

On September 20, the Postal Service filed a motion to adopt transcript corrections. Earlier today, DigiStamp filed a response opposing that motion. In its pleading, DigiStamp raises new issues, to which the Postal Service believes that some response is warranted.

DigiStamp correctly notes that the Postal Service motion to adopt transcript corrections was filed after subsequent testimony was submitted by DigiStamp that included reproduced portions of the transcript that the Postal Service is proposing to change. Ideally, that would not have been the case (although the Postal Service is unaware of any specific earlier deadline to submit transcript corrections). Realizing the unfortunate timing of events, undersigned counsel contacted Mr. Borgers before filing the motion (specifically, on September 15, the day after the surrebuttal appeared), to explain the circumstances, and to avoid any possible misconception that the Postal Service was trying to sneak something in below the radar. The circumstances, as explained to Mr. Borger, were that the post-hearing vacation of the witness had prevented him from reviewing the transcript for several weeks after the hearing, and then, when he had identified the proposed transcript corrections, counsel was out of the

office on his own vacation. The result was that corrections identified by Mr. Foti well before submission of the DigiStamp surrebuttal were not finalized for filing until the day after submission of that testimony. Under these circumstances, obviously, there was no way to anticipate that, of the four changes identified by Mr. Foti, two of them happened to be on pages of the transcript quoted in the testimony. Nevertheless, realizing that *post hoc*, Mr. Borgers was immediately contacted.

Mr. Borgers is under no obligation to believe the representations made to him by postal counsel, and he is likewise free to express his skepticism in his pleading. Having raised the matter as he did, however, it seems incumbent on the Postal Service to state affirmatively and unequivocally that the scenario sketched out by Mr. Borgers in his response – that the Postal Service “decided” to submit the proposed transcript corrections only after those portions of the transcript were quoted in his testimony -- did not occur. While it clearly would have been preferable for all concerned had the proposed corrections been filed sooner, the timing of the filing in this instance should have no bearing on the merits of a request to have the transcript properly reflect what the witness recalls he said.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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September 27, 2006

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.

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