

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

Complaint on Electronic Postmark® )

Docket No. C2004-2

INITIAL BRIEF OF DIGISTAMP  
(October 6, 2006)

DigiStamp filed a complaint at the Commission against the Postal Service in February 2004 in reference to the Postal Service's "Electronic Postmark" (EPM). The case and the supporting evidence presented by DigiStamp argue:

- a) The Postal Service created a new postal service by instituting Electronic Postmarks (EPM),
- b) The Postal Service introduced the EPM in violation of statutory requirements that any new postal service be approved by the Commission, and
- c) The Postal Service violated its proper functions
  - i) By appropriating a product developed in the private sector,
  - ii) Attempting to usurp and exploit markets developed and well-served by the private sector,
  - iii) To the detriment of both private enterprise like DigiStamp and the citizens served by DigiStamp and similar businesses.

We requested that the Commission

- iv) Should order the Postal Service to desist offering the EPM
- v) And should forbid any further development or marketing of any similar service that encroaches on the established products, processes, and markets of private business in this area.

Our arguments stand un-refuted; there is no reason to repeat them here.

In trying to refute the DigiStamp complaint, the Postal Service has

- a) claimed that the Commission has no authority over its offering of EPM service, and
- b) claimed that EPM is not a postal service.

Though the Postal Service has dogmatically repeated these claims many times, it has shown no legal justification for claim (a). In fact, as DigiStamp has shown, the Postal Service EPM directly revives the Postal Service's *Post Electronic Courier Service*, which was deemed within Commission jurisdiction in Docket C99-1.

The Postal Service has offered no truthful evidence in support of claim (b). Indeed, the Postal Service has consistently offered mistaken, misleading, and clearly false testimony in trying unsuccessfully to support claim (b).

In its testimony, Postal Service claims that its EPM is not a document delivery or communications service, because the overwhelming majority of EPMs purchased are used to authenticate faxes, not e-mails.

To begin with, even if this claim were relevant, it would be misleading.

Consider a direct analogy: A company distributes bottles of water for water coolers. It has never managed to generate many big clients, instead selling a couple of bottles a month to lots of little businesses and some upscale homes. But a new hospital is built next door to the company warehouse, and the company bids to supply bottled water to the hospital. The company wins the contract! Suddenly, eighty-five percent of its business is with the hospital. The owner starts telling people, "I don't sell water--I'm in the medical supply business."

In fact, the only reason that the majority of Postal Service EPMs are used for fax certification is that Postal Service has *one client* which purchases most of its EPMs, and that client uses the EPMs to certify faxes. But bottled water is bottled water even when a hospital buys it, and an EPM is still, as it always has been, part of a process of communication—to secure the communication of electronic documents—when a medical supply house uses it to certify faxes.

But in fact, this claim by the Postal Service is beside the point entirely. In an attempt to create the misimpression that the issue of faxes as electronic communications has already been settled under law, the Postal Service has claimed falsely that HIPAA rules specify that faxes are not electronic communications.

In fact, the HIPAA rules aim to distinguish what, for legal reasons, are considered ***electronic media***. These rules do not even address the question of whether a fax is a communication. Of course, they do not address this question because it isn't a question—everyone knows that a fax is an act of communication.

In fact, by citing its large fax-authenticating customer, the Postal Service has proved our point: The Postal Service EPM is integrated into an act of communication. This surely meets any reasonable interpretation of the Commission's definition of a postal service.

The Postal Service obfuscation by referring to HIPAA rules should not be allowed to cloud this clear fact.

In fact, the Postal Service EPM is an integral part of document delivery, and has no purpose other than certifying transmitted documents. The EPM service includes this function that is clearly a document delivery service:

- a) The Postal Service's EPM customer—whether sending an e-mail, a computer-based fax, or any other document—creates a document, selects to secure it through an EPM (generally using *USPS EPM® Extension for Microsoft® Office*), and hits "Send."
- b) The computer then uses Internet protocols (TCP/IP) to break the document into packets and send them out across the Internet to the Postal Service.
- c) The Postal Service data center—using a computer owned, leased, or otherwise under contract to, the Postal Service—then collects all the packets and reassembles them into the document.
- d) The Postal Service computer creates an email that is to be sent to each of the customer's specified recipients. The Postal Service attaches the user's document to the outgoing email and then the Postal Service sends the e-mails to the specified recipients.
- e) The recipient of the email must install the Postal Service's EPM software to be allowed to view the original document.
- f) The recipient of the document signifies that they accept delivery and then the Postal Service EPM software decrypts the document and completes the delivery.

The final step of delivery of the document requires that the customer use the Postal Service's EPM software (as did the beginning of the sending process). The Postal Service handles the complete document delivery process.

There is no sense, in English or in law, in which this is not the delivery of correspondence by the Postal Service.

While some tiny minority of users may attach EPMs to records that are not sent to someone else—physicians certifying their notes, researchers certifying lab journals, or artists certifying their works as their own—in every case, the point of attaching the EPM is to certify the contents for anyone to whom the document

may in the future be communicated. The fact that the time and person to whom the document may be communicated remains undetermined does not invalidate, but instead supports, the proposition that an EPM has no point except as an integrated element of communication. One simply does not certify purely private documents, documents one has no intention, obligation, or interest to ever share.

In testimony, we have shown in straightforward detail that the Postal Service EPM functions exactly as a document delivery service and / or is used as a service incidental to the communication of correspondence.

Because the Postal Service has offered no truthful evidence refuting DigiStamp's legal arguments, and because it has shown no legal basis for denying the Commission's authority, DigiStamp requests that the Commission rule in favor of DigiStamp and grant the relief we have requested, namely to order the Postal Service to desist offering the EPM, and to forbid any further development or marketing of any similar service that encroaches on the established products, processes, and markets of private business in this area.

Respectfully submitted,

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