

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
IN OPPOSITION TO DIGISTAMP'S MOTIONS TO SUPPLEMENT SURREBUTTAL
TESTIMONY AND TO DELAY REPLY BRIEFS
(October 12, 2006)

Earlier today, DigiStamp filed two procedural motions. One motion was for leave to supplement previously filed surrebuttal testimony, and the other was to delay reply briefs in order to deal with the consequences of such supplementation. The Postal Service opposes both of these motions.

The ostensible rationale for the need to supplement the surrebuttal testimony is the (erroneous) allegation by DigiStamp that an argument made in the Postal Service's initial brief is not supported by the cited testimony of Mr. Foti. Initially, it seems curious that DigiStamp would complain about specific citations to the record in the Postal Service's initial brief, when its own initial brief contains not one single citation to the record. Be that as it may, if DigiStamp is of the opinion that the record does not support arguments made in the Postal Service's initial brief, it has every opportunity to pursue such a claim in its reply brief. That is, in fact, one of the primary purposes of reply briefs. DigiStamp cannot, however, now be allowed to go back and supplement the record in order to oppose arguments presented in the Postal Service's initial brief. Allowing a party to add to the record *after* it has seen the opposing party's brief would appear to be unprecedented in Commission practice and would, in any event, be a clear violation of the due process rights of the opposing party. The joint motions of DigiStamp

appear to be the product of some confusion regarding the distinct procedural phases of a case, in which the first stage is developing an evidentiary record, and the second stage is presenting arguments on brief that are supported by the evidentiary record (or, alternatively, presenting arguments in a reply brief that views stated by the opposing party in its opening brief are not in accord with the evidentiary record).

Since there is no legitimate justification for DigiStamp to be allowed to supplement its surrebuttal testimony, which is the only reason proffered to require an adjustment to the existing schedule, there is no justification for any delay in the filing of reply briefs. As noted on page 28 of the Postal Service's Initial Brief, the Postal Service is seeking an expeditious resolution of this matter, based on the need to make fundamental business decisions. Unwarranted delay in the briefing schedule should be avoided. Both of DigiStamp's motions should be denied.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorney:

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October 12, 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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