

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

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**COMPLAINT ON ELECTRONIC POSTMARK**

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**DOCKET NO. C2004-2**

**REPLY BRIEF OF AUTHENTIDATE, INC.  
(October 20, 2006)**

In its complaint filed in 2004, DigiStamp asserts that the Electronic Postmark (EPM) is an electronic communication constituting a “postal service” over which the Commission has jurisdiction and requests that the Commission order the USPS to “desist offering the EPM.” This requested relief is repeated in DigiStamp’s Initial Brief filed on October 6, 2006.

Lost in these arguments is the role of Authentidate, Inc. and the significant harm to Authentidate and consumers of USPS EPMs should the relief requested by DigiStamp be granted. Authentidate submits this reply to DigiStamp’s Initial Brief to address these issues.

Authentidate competed for the opportunity to develop the USPS EPM, as it exists today, for the USPS and was selected by the USPS to be a non-exclusive provider of USPS EPMs to the public. Tr. 1/79. Authentidate entered into a five-year contract (with the option to extend) with the USPS in 2002. See Tr. 1/165. Pursuant to that agreement, Authentidate invested millions of dollars and significant resources in creating the USPS EPM technology used today and marketing the USPS EPM to potential customers. Customers have entered into agreements to buy USPS EPMs, invested in automated processes and software applications, and made commitments to government agencies at the state and federal levels based upon assurances that the

USPS, a trusted governmental entity, would be available to verify (authenticate) documents utilizing the USPS EPM today years in the future in the event that a dispute arises over the content in such documents. See Tr. 1/166-68. Customers have come to rely upon the USPS EPM to help with meeting obligations imposed by the U.S. Department of Health and Human Services, and verifying the contents of legal documents. See USPS-RT-1 at 11-12. The termination of the EPM service offered by the USPS and Authentidate will harm these customers as well as Authentidate.

Further, we understand the relief sought by DigiStamp -- termination of the USPS EPM program -- is not relief available from the Commission and would, even if available, be inappropriate in these circumstances. The regulations establishing the Commission's authority do not include the right to enjoin a service offered by the USPS. See 39 U.S.C. Ch. 36. In addition, the Commission has stated when it published the 2006 rule establishing the revised definition of "postal service" that the rule imposes no restrictions on the types of services, postal or otherwise, that the USPS may wish to offer. 71 Fed. Reg. 2465. The new rule, therefore, is intended by the PRC to provide the Commission with authority to oversee electronic communications services and products and is not intended to stop on-going services offered by USPS. Given (1) the investment in the USPS EPM by Authentidate and the customers of the USPS EPM, and (2) the customer reliance in the continuation of the USPS EPM service, it would be particularly inappropriate to enjoin this service even if the Commission had such power.

For these reasons, the Commission should take no action to prevent the USPS from continuing its EPM service.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 20<sup>th</sup> day of October, 2006 a copy of Authentidate Inc.'s Reply Brief was served upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.

/s/ Andrea T. Vavonese

Andrea T. Vavonese