

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON DC 20268-0001

REVIEW OF NONPOSTAL SERVICES)
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)

Docket No. MC2008-1

**OPPOSITION OF EPOSTMARKS, INC. TO MOTION OF
DIGISTAMP, INC., FOR LEAVE TO RESPOND TO USPS FILING
OF PROPOSED MAIL CLASSIFICATION SCHEDULE
(December 16, 2008)**

Epostmarks, Inc. opposes the December 12 motion of Digistamp, Inc., for leave to respond to the “Notice of Filing of Proposed Mail Classification Schedule Language For Six Nonpostal Services Pursuant To Order No. 120” filed by the Postal Service on November 7, 2008. Digistamp asserts that its 11th-hour “response”—submitted only seven days before the deadline for the Commission’s decision under 39 U.S.C. § 404(e)(3)—is justified by the “new information” in the Postal Service’s November 7 filing that Digistamp “never had an opportunity to address in earlier filings with the Commission.” Digistamp Motion at 1. In fact, Digistamp was on notice of the supposedly significant new information weeks ago, and in some instances at the very outset of this case. Considering the new arguments belatedly offered by Digistamp would unfairly prejudice the interests of Epostmarks and other participants who have supported continuation of the Postal Service’s Electronic Postmark (“EPM”).

(1) The primary “new” development supposedly disclosed by the Postal Service’s November 7 filing is that the Postal Service intends to offers the EPM through licensees rather than directly, and that the licenses will be nonexclusive. See

DigiStamp Response at 2-5; see also *id.* at 6-8, 10 (speculating that, because the USPS offers the EPM through licensees, state laws that give legal effect to communications with an EPM time stamp are null and void). But the Postal Service made the nature of these licensing arrangements clear early in this case. See USPS Notice of Submission of Sworn Statement on “Nonpostal Services” (March 19, 2008) at 29. And DigiStamp has commented repeatedly on these licensing arrangements. See Supplemental Statement of Rick Borgers on Behalf of DigiStamp, Inc. (Aug. 20, 2008) at 8; DigiStamp Brief (Sept. 10, 2008) at 4-5; *cf.* Epostmarks Reply Br. (Sept. 30, 2008) at 7-8 (responding to DigiStamp).

(2) DigiStamp also criticizes the fees that the Postal Service plans to charge its EPM licenses are too low, speculating that EPM applications will “cannibalize” existing postal services. DigiStamp Response at 2. The reasonableness of the EPM fee structure, however, is beyond the scope of the issues in this proceeding, which is limited to the threshold issue under 39 U.S.C. § 404(e)(3) of whether the Postal Service should continue to offer the EPM at all. In any event, a week before the deadline for the Commission’s decision is far too late for DigiStamp, or any other party, to start a debate over the cross-elasticities of demand for EPM applications vs. traditional postal services.

(3) The bulk of DigiStamp’s December 12 comments do not even pretend to respond to anything new from the Postal Service. Rather, DigiStamp is simply trying to have the last say, at a point too late for meaningful rebuttal by other parties. Neither the schedule in this case nor the Commission’s rules support this stratagem.

Respectfully submitted,

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