

PRESIDING OFFICER'S  
RULING NO. C2004-2/2

UNITED STATES OF AMERICA  
POSTAL RATE COMMISSION  
WASHINGTON, DC 20268-0001

Complaint on Electronic Postmark

Docket No. C2004-2

PRESIDING OFFICER'S RULING  
ESTABLISHING PROCEDURAL SCHEDULE

(May 5, 2006)

In response to P.O. Ruling C2004-2/1, the Postal Service and AuthentiDate, Inc. (AuthentiDate) indicate an intention to engage in discovery of the Direct Testimony of Rick Borgers submitted on behalf of DigiStamp, Inc.<sup>1</sup> To that end, the Postal Service requests a month for discovery, *i.e.*, through May 26, 2006, while AuthentiDate seeks three months.

Under the circumstances, the duration suggested by the Postal Service is reasonable and will be adopted. On May 3, 2006, the Postal Service filed an omnibus rate request. While that proceeding will place considerable demands on all stakeholders, there is nonetheless a need to move forward with this proceeding. Consequently, the parties are urged to initiate discovery promptly and not defer it to the end of the discovery period.<sup>2</sup>

The parties are uncertain whether they will need to cross-examine Mr. Borgers orally. While both reserve the right to do so, the Postal Service deems it unlikely that

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<sup>1</sup> Response of the United States Postal Service to Presiding Officer's Ruling No. C2004-2/1 Regarding Scheduling Matters, May 1, 2006 (Postal Service Response); AuthentiDate, Inc.'s Response to Presiding Officer's Ruling Regarding Preliminary Procedural Matters Ruling C2004-2/1, May 1, 2006 (AuthentiDate Response).

<sup>2</sup> Under the Commission's Rules of Practice, answers to discovery are due within 14 days of the filing of the discovery request. Nonetheless, those on whom discovery is served are urged to provide answers as soon as practicable.

oral cross-examination will be necessary.<sup>3</sup> A tentative hearing date will be set for June 20 at which such time the parties will have an opportunity to cross-examine Mr. Borgers. Parties electing to cross-examine Mr. Borgers will be required to give written notice on or before June 12. If no party requests cross-examination, the hearing will be cancelled.

The Postal Service indicates that currently it plans to submit rebuttal testimony. Assuming no oral cross-examination, the Postal Service suggests that its rebuttal testimony could be filed approximately four to six weeks after receipt of final discovery responses. AuthentiDate is uncertain whether it will present rebuttal testimony. It requests six weeks from the close of discovery to prepare its rebuttal testimony, if any.

A tentative due date for rebuttal testimony will be set for July 7. This date accommodates the parties' requests, being six weeks from the close of discovery and approximately four weeks from the last day for receipt of answers to discovery.<sup>4</sup> Furthermore, there is sufficient time between the tentative hearing date, June 20, and the tentative rebuttal due date, July 7, to incorporate anything learned at the hearing in such testimony. If no rebuttal testimony is filed, the procedural schedule will be adjusted accordingly.

In light of the foregoing discussion, the procedural schedule set forth in the Appendix is adopted. The schedule adopted herein affords parties an opportunity to submit testimony and cross-examine witnesses that, ultimately, they may elect to forego. Should that happen, the schedule is subject to modification to reflect the parties' choices. The parties should be aware, however, that in establishing this schedule (or any amendment to it) the intent is to move this proceeding forward as expeditiously as practicable.

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<sup>3</sup> AuthentiDate Response at 1; Postal Service Response at 1.

<sup>4</sup> The latter assumes that discovery is served on the last day for discovery, May 26. Parties can assure themselves more time for preparing rebuttal testimony by submitting their discovery requests promptly.

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The procedural schedule set forth in the Appendix of this Ruling is adopted.

Tony Hammond  
Presiding Officer

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Procedural Schedule  
(all dates 2006)

Last day for written discovery	May 26
Notice of intent to cross-examine due <sup>5</sup>	June 12
Tentative hearing date on DigiStamp direct testimony	June 20
Notice of intent to file rebuttal testimony due	June 22
Rebuttal testimony due	July 7
Last day for written discovery on rebuttal testimony	July 21
Notice of intent to cross-examine rebuttal testimony due	Aug. 7
Tentative hearing date on rebuttal testimony	Aug. 15
Notice of intent to file surrebuttal testimony due	Aug. 17
Surrebuttal testimony, if any, due <sup>6</sup>	Aug. 31
Tentative hearing date for surrebuttal testimony	Sept. 6
Initial briefs due	Sept. 22
Reply briefs due	Sept. 29

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<sup>5</sup> Notice called for under the procedural schedule is to be filed pursuant to the Commission's Rules of Practice. See 39 C.F.R. §§ 3001.9 to 3001.12.

<sup>6</sup> Surrebuttal testimony, if any, will not be subject to written discovery unless the parties agree to employ it in lieu of a hearing.