

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

Complaint on Electronic Postmark

Docket No. C2004-2

PRESIDING OFFICER'S RULING  
DENYING MOTION TO STRIKE

(Issued October 4, 2006)

The Postal Service moves to strike pages 2 through 9 of the surrebuttal testimony of DigiStamp witness Borgers asserting that they are not admissible evidence under Rule 31 of the Commission's Rules of Practice and Procedure, which provides that "relevant and material evidence which is not unduly repetitious or cumulative shall be admissible."<sup>1</sup> The Postal Service argues that pages 2 through 9 of Borgers's surrebuttal testimony consist largely of quotes from Postal Service witness Foti's cross-examination plus witness Borger's "comments and analysis on the evidence contained therein." *Ibid.* It contends witness Borgers presents no new facts or expert opinion, characterizing the surrebuttal as argument, not testimony.<sup>2</sup>

DigiStamp opposes the motion to strike.<sup>3</sup> It argues that the quotations to the record are not repetitious, but are merely a prologue to witness Borgers's analysis of what are characterized as misstatements of fact by witness Foti. *Id.* at 1. It argues that the Postal Service's objection is illogical, suggesting the impossibility of addressing Foti's "misstatements" without identifying the passages in question. *Ibid.*

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<sup>1</sup> Motion of the United States Postal Service to Strike Portions of the Surrebuttal Testimony of DigiStamp Witness Rick Borgers, September 20, 2006, at 1 (Postal Service Motion).

<sup>2</sup> *Id.* at 1-2. The Postal Service also references Special Rules issued in prior rate cases indicating that argument will not be received into evidence. *Id.* at 2.

<sup>3</sup> Response to Motion of the Postal Service to Strike Portions of the Surrebuttal Testimony of DigiStamp Witness Borgers, September 27, 2006 (DigiStamp Response).

DigiStamp also reviews, on a page-by-page basis, the surrebuttal testimony, contending that new facts are presented by witness Borgers in response to witness Foti on subjects on which he is offered as an expert witness, *i.e.*, electronic communications and time stamps. *Id.* at 2-3.

The motion to strike is denied. Under the procedural schedule, DigiStamp exercised its option to file surrebuttal testimony. It is intended to rebut claims made by witness Foti (and the Postal Service) regarding the nature of the service provided. It addresses facts at issue in this proceeding. Apart from any issue concerning the merits of the surrebuttal testimony, it appears to respond to specific testimony offered by witness Foti. Thus, there is no basis to strike it.

#### RULING

The Motion of the United States Postal Service to Strike Portions of the Surrebuttal Testimony of DigiStamp Witness Rick Borgers, filed September 20, 2006, is denied.

Tony Hammond  
Presiding Officer