

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

IN THE MATTER OF:
FREISTATT POST OFFICE
FREISTATT, MISSOURI 82929

DOCKET No. A2013-8

**MOTION OF UNITED STATES POSTAL SERVICE
TO DISMISS PROCEEDINGS**
(August 1, 2013)

By means of Order No. 1791 (July 24, 2013), the Postal Regulatory Commission docketed correspondence from Deborah Schoen ("Petitioner"), a customer of the Freistatt, Missouri Post Office and clerk of the Village of Freistatt, assigning PRC Docket No. A2013-8 as an appeal pursuant to 39 U.S.C. § 404(d). That correspondence purported to invoke the Commission's jurisdiction to consider an appeal of the Postal Service Final Determination to Close the Suspended Freistatt, MO Post Office and Establish Service by Rural Route Service (Final Determination). The Petition for Review was dated July 21, 2013 and was received by the Commission on July 22, 2013.

The appeal was untimely filed. Under 39 U.S.C. § 404(d)(5), "[a] determination of the Postal Service to close or consolidate any post office may be appealed by any person served by such office to the Postal Regulatory Commission within 30 days after such determination is made available to such person."¹ Section 404(d)(6) provides that:

¹ 39 U.S.C. § 404(d)(5).

[f]or purposes of paragraph (5), any appeal received by the Commission shall –

- (A) if sent to the Commission through the mails, be considered to have been received on the date of the Postal Service postmark on the envelope or other cover in which such appeal is mailed; or
- (B) if otherwise lawfully delivered to the Commission, be considered to have been received on the date determined based on any appropriate documentation or other indicia (as determined under regulations of the Commission).²

In this case, since the services at the Freistatt Post Office were under emergency suspension, the Final Determination was posted at the Stotts City Post Office and the Monett Post Office beginning on June 14, 2013 and June 15, 2013 respectively, pursuant to 39 C.F.R. § 241.3(g)(1)(i).³ See Exhibit 1, Round-Date Stamped Cover page of Final Determination. Accordingly, pursuant to section 404(d)(5), the 30 day appeal period expired in mid-July. Thus, it is clear that the appeal was untimely filed. As indicated above, the Petition for Review was dated July 21, 2013 and received by the Commission on July 22, 2013. Both dates are well after the end of the Final Determination posting period in this docket and after the expiration of the 30 day appeal period.

Statutory time limits for the initiation of legal action set by Congress, such as 39 U.S.C. § 404(d)(5), are limited waivers of sovereign immunity that define the jurisdiction of the reviewing body. See Irwin v. Dept. of Veterans Affairs, 498 U.S. 89 (1990). Irwin involved the interpretation of 42 U.S.C. § 2000e-16(c), which sets a 30 day time limit in language very similar to that used in section 404(d)(5): "[w]ithin thirty days of receipt of notice of final action taken by ... the Equal Employment Opportunity Commission, [an aggrieved party] may file a civil

² 39 U.S.C. § 404(d)(6).

³ Additionally, even though not required by statute or regulation, the Postal Service also posted the Final Determination at the CBUs near Freistatt Post Office on June 17, 2013.

action...." Id. at 94. The Supreme Court noted the similarity of this time limit to others applicable in suits filed against the government, and that such congressional waivers of sovereign immunity must be construed very narrowly. Id. The same principle applies here and militates in favor of dismissal.

The Commission has consistently dismissed appeals where petitions for review were received after the 30 day appeal period. In Docket No. A2011-41, the petitioner submitted a petition for review on August 5, 2011, one day after the deadline for filing an appeal passed. Commission Letter to Petitioner Closing Appeal, State University Post Office, AR, Docket No. A2011-41 (August 18, 2011). In this instance, the Commission acted on its own, without initiating any formal appeal proceedings or a motion to dismiss from the Postal Service, to dismiss the appeal as untimely. In its letter to the petitioner, the Commission explained that section 404(d)(5) requires that an appeal of a Post Office closing or consolidation must be filed (or postmarked) with the Commission no later than 30 days after the Postal Service posts a Final Determination. Id. Furthermore, the Commission stated that it was unable to consider the petition as a timely appeal as it did not conform to the statutory requirements for an appeal. Id. See also PRC Order No. 672, Graves Mills Post Office, VA, Docket No. A2011-3 (February 11, 2011)(dismissing a petition for review filed on November 22, 2010 as untimely; the Final Determination was posted from June 30 through July 31, 2010); PRC Order No.1189, Little America Post Office, WY, Docket No. A2012-64 (February 1, 2012)(dismissing a petition for review received on November 4, 2011 as untimely; the Final Determination was posted from August 29 to

September 30, 2011 and the deadline for appealing the Final Determination was September 28, 2011).

In sum, the 30 day time limit embodied in section 404(d)(5) is a limit upon the jurisdiction of the Commission that must be strictly construed. Therefore, the Commission should dismiss the late appeal as untimely and moot.

Respectfully submitted,

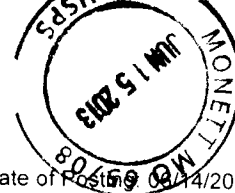
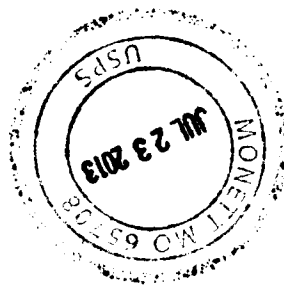
UNITED STATES POSTAL SERVICE

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August 1, 2013



Date of Posting: 06/14/2013

Exhibit 1 2013-8

Date of Removal: 07/16/2013

FINAL DETERMINATION TO CLOSE
THE SUSPENDED FREISTATT, MO POST OFFICE
AND ESTABLISH
SERVICE BY RURAL ROUTE SERVICE

DOCKET NUMBER 1364133 - 65654

I. RESPONSIVENESS TO COMMUNITY POSTAL NEEDS

The Postal Service is issuing the final determination to close the Freistatt, MO Post Office and provide delivery and retail services by rural route service under the administrative responsibility of the Monett Post Office, located nine miles away.

The postmaster position is not vacant. Postmaster level and office service hours are determined by a workload analysis which includes the number of deliveries and revenue.

The office is being studied for possible closing or consolidation due to the following reasons; Failed lease negotiations

The Freistatt Post Office provided retail service from 8:00 am - 12:00 pm and 1:00 pm - 4:00 pm Monday through Friday and 9:00 am - 11:00 am on Saturday.

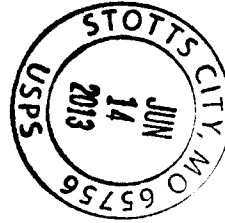
The revenue trend for the office during the last several years is as follows:

FY 08 \$ 22,929
FY 09 \$ 23,450
FY 10 \$ 23,813
FY 11 \$ 25,414
FY 12 \$ 25,359.

Since the suspension of service, customers have received delivery and retail services by rural route service emanating from the Monett Post Office, an EAS-20 level office located 9.0 miles away. Window service hours are from 830 to 1630, Monday through Friday, and 830 to 1130 on Saturday.

On August 25, 2011, representatives from the Postal Service were available at Freistatt Community Building to answer questions and provide information to customers. 89 customer(s) attended the meeting.

Exhibit 1 2013-8



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Date of Removal: 07/16/2013



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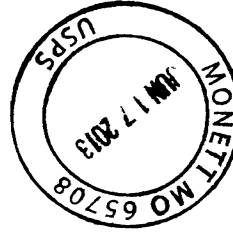
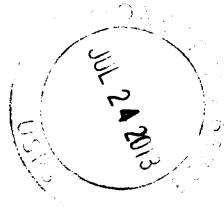
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Posted at Freistatt
CBU Boxes

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