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ORDER NO. 1296

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

Before Commissioners: Edward J. Gleiman, Chairman
George A. Omas, Vice Chairman
Dana B. Covington; Ruth Y. Goldway;
and W. H. "Trey" LeBlanc, III

In the Matter of:
Roanoke, WV 26423
(Robert J. Conley, Petitioner)

Docket No. A2000-1

ORDER DENYING POSTAL SERVICE
MOTION TO DISMISS

(Issued June 16, 2000)

On April 21, 2000, the Commission received correspondence from Robert J. Conley (Petitioner) objecting to the Final Determination of the United States Postal Service to close the suspended Roanoke, West Virginia post office and continue to provide rural route service. The Commission established Docket No. A2000-1 to consider the appeal pursuant to section 404(b) of the Postal Reorganization Act [39 U.S.C. § 404(b)]. On May 16, 2000, the Postal Service filed a motion to dismiss the appeal on the basis that the appeal was not received by the Commission within 30 days after the posting of the Final Determination. On May 31, 2000, Oliver R. Posey (by counsel) filed a notice of intervention pursuant to section 111(b) of the Commission's Rules of Practice (39 C.F.R. § 3001.111(b)).

Under section 404(b)(5) of title 39, United States Code, a determination of the Postal Service to close or consolidate a post office may be appealed by any person served by such office to the Postal Rate Commission within 30 days after the determination is made available to such person. According to Exhibit 2, attached to the

Postal Service's motion, the Final Determination to close the Roanoke post office was posted at the Walkersville/Crawford post office from March 4, 1998, through April 6, 1998. The Walkersville/Crawford post office has been providing alternative service to former customers of the Roanoke post office since February 19, 1982, when operation of the Roanoke post office was "temporarily" suspended. Both petitioner Conley and intervenor Posey state that they were unaware of the Postal Service's posting of the Final Determination to close the Roanoke post office, and both assert that the Postal Service failed to provide adequate notice of the closing, as required by law.

Under section 404(b) of the Postal Reorganization Act (39 U.S.C. § 404 (b)), the Postal Service is required to provide adequate notice of its intention to close or consolidate a post office at least 60 days prior to the proposed date of change and undertake certain other procedural steps in order to ensure that persons who are served by such post office will have an opportunity to present their views.

The record shows that following the suspension of operation of the Roanoke post office in February 1982, the Postal Service commenced proceedings to close the post office in 1984. The proposal to close the Roanoke post office was posted from March 6 through May 5, 1984, and the Final Determination to close was posted on December 4, 1984. The Final Determination was appealed to this Commission on December 24, 1984, by Oliver R. Posey, the intervenor in this proceeding. By opinion issued on April 10, 1985, the Commission remanded the matter to the Postal Service for further consideration. PRC Op. A85-11. It appears from the record before the Commission that no further action was taken by the Postal Service with respect to the Roanoke post office until July 7, 1997, on which date a revised proposal to close the Roanoke post office was posted at the Walkersville/Crawford post office.

Petitioner Conley and intervenor Posey argue that the Postal Service should have taken other steps to ensure that former customers of the Roanoke post office were made aware of, and understood the nature of, the proposed action. In the Postal Service's motion to dismiss, there is no indication whether the proposal and Final Determination to close the Roanoke post office were posted at any location in addition

to the Walkersville/Crawford post office or whether any other steps were taken to notify persons formerly served by the Roanoke post office.


Based on the information available to the Commission, the Commission finds that the Postal Service failed to provide adequate notice of its intention to close the Roanoke, West Virginia post office, as required by section 404(b)(1) of title 39, United States Code. The Commission finds further that the failure of the Postal Service to provide adequate notice prejudiced the petitioner's ability to file a timely appeal in accordance with section 404(b)(5) of title 39. Therefore, the Commission finds that the appeal of Robert J. Conley may be considered as timely filed.

It is ordered:

1. The Motion of the United States Postal Service to dismiss the proceeding in Docket No. A2000-1 is denied.
2. The Postal Service shall file the administrative record in this appeal by June 23, 2000.

By the Commission.

(SEAL)


Margaret P. Crenshaw
Secretary