

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

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:
ROANOKE, WV 26423
(ROBERT J. CONLEY,
PETITIONER)

Docket No. A2000-1

UNITED STATES POSTAL SERVICE MOTION FOR RECONSIDERATION
OF ORDER NO. 1296
(June 23, 2000)

Commission Order No. 1296 addressed the United States Postal Service Motion to Dismiss this proceeding.¹ Order No. 1296 denied the Motion to Dismiss and directed the Postal Service to file an administrative record with respect to this appeal. For the following reasons, the Postal Service requests that the Commission reconsider this directive.

The Postal Service filed a Statement of Explanation by United States Postal Service Regarding Filing of Administrative Record ("Statement of Explanation") on June 16, 2000, the same day the Order was issued. Order No. 1296 was thus issued before the Commission was able to review the Statement of Explanation, which explains in detail why an administrative record has not been filed in this post office closing case, and why the Postal Service Motion to Dismiss for lack of subject matter jurisdiction should be granted. Because the Commission did not have a chance to review the Statement of Explanation prior to issuing Order No. 1296, the Commission should reconsider its order.

The Commission in Order No. 1296 failed to address the legal argument

¹Motion to Dismiss Proceedings, Docket No. A2000-1, *Roanoke, WV 26423* (May 16, 2000).

presented by the Postal Service, which is whether or not an appeal filed almost 2 years past the statutorily mandated filing deadline can be considered. As stated in the Motion to Dismiss, under 39 U.S.C. § 404(b)(5) and 39 C.F.R. § 241.3(a)(2)(iv), any appeal of a post office closing must be received by the Commission within 30 days of the posting of the final determination. The Motion to Dismiss attached exhibits which provide proof that both a revised proposal and the Final Determination were posted at the Walkersville/Crawford Post Office, the only "affected" office, for the required length of time. These facts are not disputed. The Commission found that based on the information available, the Postal Service failed to provide adequate notice of its intention to close the Roanoke, West Virginia Post Office. However, the Commission failed to explain why the notice was not adequate; how it concluded that there was insufficient notice by the Postal Service regarding the post office closing; or how it can reach the merits when it lacks jurisdiction. As stated in further detail in its Statement of Explanation, the Postal Service was in accordance with the requirements of 39 C.F.R. § 241.3(g) and Postal Operations Manual (POM) § 211.671(a), when posting the notices at the Walkersville/Crawford Post Office.

The Commission further found 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, and therefore found the appeal of Robert J. Conley timely. However, the Commission does not have the authority to waive the statutory deadline and take subject matter jurisdiction over this matter thereby permitting it to address the merits of petitioner's arguments. ²

Accordingly, the United States Postal Service respectfully requests that the

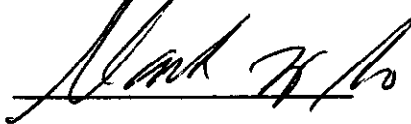
²See Statement of Explanation by United States Postal Service Regarding Filing of Administrative Record, Docket No. A2000-1, *Roanoke, WV 26423* (June 16, 2000), pp.5-10.

Commission reconsider its decision to deny the Postal Service Motion to Dismiss the proceeding in Docket No. A2000-1.³

Respectfully submitted,

UNITED STATES POSTAL SERVICE

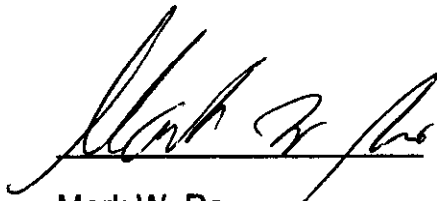
By its attorney:



Mark W. Ro

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.



Mark W. Ro

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June 23, 2000

³As a courtesy, and notwithstanding the Commission's lack of jurisdiction, the Postal Service is providing the Commission a copy of the administrative record today. The Postal Service has not determined whether it will be participating further in this docket .