

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

In the Matter of:)
Post Office at)
Hacker Valley, West Virginia 26222-9998) Docket No. A2009-1
(Retha Hinkle Casto, Petitioner))

UNITED STATES POSTAL SERVICE
MOTION TO DISMISS PROCEEDING
(July 15, 2009)

On June 20, 2009, Petitioner filed with the Postal Rate Commission (Commission or PRC) a Participant Statement on PRC Form 61/*Petition for Appeal* alleging the posting on May 22, 2009 by the Postal Service of a Final Determination to close the Hacker Valley Post Office in West Virginia. The Commission responded on July 1, 2009, by issuing PRC Form 56/*Notice of Filing* transmitting the appeal of closing of, Hacker Valley, WV 26222-9998 Post Office. On July 6, 2009, the PRC issued Order No. 238, *Notice and Order Accepting Appeal and Establishing Procedural Schedule*, thereby instituting this proceeding under 39 U.S.C. 404(d)(5) to consider the Petitioner's appeal. The procedural schedule established by the Commission directs the Postal Service to file an administrative record or a responsive pleading by July 15, 2009. Since the Postal Service has not initiated a discontinuance study or issued any final determination to close the Hacker Valley Post Office, the Postal Service does not have an administrative record compliant with 39 C.F.R. § 241.3 available for filing, and is instead filing this Motion to Dismiss.

The Postal Service has not initiated a discontinuance study to close or consolidate the Hacker Valley Post Office; however, operations at the Hacker Valley Post Office are currently

suspended.¹ On May 22, 2009, the Postal Service sent a letter to the community notifying it of the impending suspension and of a community meeting planned for June 8, 2009.² The suspension began on June 30, 2009,³ after the lessor of the property housing the Hacker Valley Post Office declined to renew the lease for the Postal Service, and no suitable alternate quarters could be found.⁴ The lease expired on July 2, 2009.⁵

The Hacker Valley Post Office is an EAS Grade 11 office with 3 Highway Contract Routes (HCRs), 72 Post Office boxes, and an additional 193 customers with Hacker Valley addresses. The nearest Post Office to Hacker Valley is also an EAS Grade 11 office, located 11 miles away in Diana, West Virginia.⁶ Counsel is informed that discussion of building a new facility for the Hacker Valley Post Office means the office may yet re-open.

SUMMARY OF THE POSTAL SERVICE POSITION

The Postal Service respectfully requests that the Commission dismiss this petition appealing the alleged discontinuance of the Hacker Valley Post Office Post, since no such discontinuance has taken place.

¹ A discontinuance would be announced in the *Postal Bulletin*'s "Post Office Changes" section, where no such discontinuance yet appears. See, e.g., <http://www.usps.com/cpim/ftp/bulletin/pb2009.htm>.

² See Attachment 1, May 22, 2009 "Dear Customer" letter notifying customers of the upcoming suspension of the Hacker Valley Post Office.

³ *Id.*

⁴ See Attachment 2. (Attachment 2, *Notice of Post Office Emergency Suspension* for the Hacker Valley Post Office, from the Appalachian District, lists June 25, 2009 as the date of suspension. However, counsel has confirmed that the Post Office was in fact kept open until June 30. The *Notice* does not reflect this because it was issued before the decision was made to keep the Post Office open longer.)

⁵ See Attachment 3, *Property Detail Report* for the Hacker Valley Post Office. This report was retrieved from the Facility Management System (FMS) as corroboration for the "Dear Customer" letter referenced in Attachment 1 and the Notice in Attachment 2.

⁶ This information is also available from the "Locate a Post Office" link found on United States Postal Service webpage, <http://www.usps.com>.

ARGUMENT

The Petitioner files her appeal under 39 U.S.C. § 404(d)(5), which gives her standing to appeal a Postal Service decision to the Postal Regulatory Commission, and gives the Commission jurisdiction to hear such appeals. But because there has not been “a determination by the Postal Service to close or consolidate any Post Office,”⁷ the Petitioner cannot bring an appeal under this section. Similarly, section 404(d)(5) does not give the Commission the authority to hear **any** appeal by a Postal Service customer—only an appeal of “a determination by the Postal Service to close or consolidate any office.” The Postal Service respectfully submits that without such a prior determination by the Postal Service, the Commission should not hear an appeal by a postal customer under section 404(d)(5).⁸

The Postal Service summarizes below the facts regarding the Hacker Valley Post Office, many of which can be adduced from Attachments 1–3.

On May 22, 2009, the Post Office Operations Manager (MPOO) at the Appalachian District, which serves the Hacker Valley Post Office, sent a “Dear Customer” letter to Hacker Valley postal customers notifying them of the upcoming suspension of operations at that Post Office, and explaining that this necessity was triggered by the lessor, who directed the Postal Service vacate the property by July 2, 2009, the lease expiration date. The Petitioner evidently misconstrued this May 22, 2009

⁷ 39 U.S.C. § 404(d)(5).

⁸ A *formal* determination by the Postal Service to close or consolidate a Post Office is a section 404(d)(5) prerequisite for appellate review by the Commission. Section 404(d)(5) requires an on-the-record review of the Postal Service’s decision, and if that decision is not official, there will be no record upon which to base any review. Before official proceedings to close or consolidate a Post Office take place, thereby creating a 39 C.F.R. § 241.3 record, a petitioner’s claim under section 404(d)(5) is not yet ripe.

notice of suspension as a final determination by the Postal Service to discontinue the Hacker Valley Post Office.

The Appalachian District also prepared the *Notice of Post Office Emergency Suspension* (Attachment 2). This *Notice* shows that there was an emergency suspension of operations at the Hacker Valley Post Office, because the Postal Service had to vacate the facility by July 2, 2009, at the demand of the lessor, and not because the Postal Service made a final determination that the Hacker Valley Post Office should be discontinued.

The *Property Detail Report* for the Hacker Valley Post Office (Attachment 3) confirms July 2, 2009 as date of expiration for the lease for the Post Office.

Accordingly, the Postal Service requests that the Commission dismiss this action appealing the alleged discontinuance of the Hacker Valley Post Office under 39 U.S.C. § 404(d)(5), since operations have only been suspended and no final determination to close or consolidate this Post Office has been issued.

CONCLUSION

The Petitioner's appeal can not be maintained under section 404(d)(5). At best, the appeal is not yet ripe; while the Postal Service may yet choose to study the Hacker Valley Post Office for discontinuance, it has not done so and the suspension could instead be lifted.

WHEREFORE, the United States Postal Service respectfully requests that this matter be dismissed.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux
Chief Counsel
Ratemaking

Kenneth N. Hollies
Attorney

Sarah A. Adam
Law Clerk

ATTACHMENT #1



May 22, 2009

Dear Postal Customer:

The Hacker Valley Post Office will be suspended on June 30, 2009. The lessor has requested the Postal Service to vacate the facility no later than July 2, 2009. Therefore, it will be necessary to suspend services at the Hacker Valley Post Office at the close of business on June 30, 2009. This change is tentative and will not lead to a formal proposal unless we conclude that it will provide a maximum degree of regular and effective postal services.

While the office is suspended, delivery and retail services will be provided by a Highway Contract Carrier to roadside mailboxes installed by customers effective July 1, 2009. Please contact the postmaster of the Buckhannon Post Office for advice regarding the placement of mailboxes. **Customers presently receiving rural delivery will not experience a change in service**, with the possible exceptions of picking up parcels and accountable mail at the Buckhannon or Diana Post Office that the carrier was unable to deliver. **Hacker Valley route customers will continue to use Hacker Valley WV 26222 as their last line of their delivery address.**

Rural delivery is particularly beneficial to senior citizens, people with disabilities, and working people because no one has to pick up the mail from the post office. You will have 24-hour access to your mail. In addition, the highway contract carrier can provide all the retail services provided at the Hacker Valley Post Office. Enclosed is information about some of the services available from the carrier. Most transactions do not require meeting a carrier at the mailbox. *Stamps By Mail* order envelopes and *Money Order Application* forms are available for your convenience; or you may place a note in the mailbox, with payment, and the carrier will provide the requested services. When an accountable item requiring a signature, such as a certified letter, cannot be delivered on the first day, the carrier will return the item to the Buckhannon or Diana Post Office. You may pick up the article at the Buckhannon or Diana Post Office, request redelivery on another day convenient for you, or authorize the carrier to deliver the item to another person. If appropriate, Post Office box refunds will be provided by the Hacker Valley Post Office.

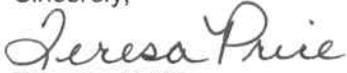
Customers who wish to obtain Post Office box service may do so at the Diana Post Office, located 11 miles away. Window service hours at Diana are from 8:00 a.m. - 4:30 p.m., Monday through Friday, and 9:30 - 11:30 a.m. on Saturday. Post Office box lobby hours are 8:00 a.m. - 4:30 p.m. Post Office boxes are available at this location at the same fees.

Retail services are also available at the Buckhannon Post Office which has 24-hour lobby access for customer convenience. Window service hours at Buckhannon are 8:30 a.m. - 4:30 p.m. Monday through Friday and 9:00 a.m. - 12:00 noon on Saturday.

If you have any questions concerning the placement of rural mailboxes or the services available to you through the Highway Contract carrier, please contact the Buckhannon postmaster at (304) 472-2020.

I realize with change there is always concern. No final decision to permanently discontinue the Post Office has been made. **A community meeting will be held at the Hacker Valley Senior Citizens Center on June 8, 2009 from 6 to 7 p.m.**, to explain our plans and solicit your comments concerning possible alternate means of providing postal and other services. In the interim, we are confident that carrier delivery will continue to provide Hacker Valley customers with effective and regular postal services.

Sincerely,

for 
Theresa Mullins
Manager, Post Office Operations
200 Cava Drive

Clarksburg, WV 26301-9997, WV Mpoozip

Enclosures (1)

bcc: Postmaster/OIC Hacker Valley
Postmaster Buckhannon, 26201/ Diana, 26217
Post Office Review Coordinator

ATTACHMENT #2

NOTICE OF POST OFFICE EMERGENCY SUSPENSION

A. Suspended Office

Name Hacker Valley State: WV ZIP Code: 26222

Area: Eastern District: Appalachian

Congressional District: 3rd County: Webster

Post Office EAS Grade: 11 Finance Number: 553420

Classified Station Classified Branch CPO Date CPO Established: _____

Effective date of suspension: June 25, 2009

Justification (Specific reason(s) for suspension):

Eviction. Lessor requested the Postal Service vacate the facility no later than July 2, 2009

No suitable alternate quarters

Alternate Service Provided (i.e. rural delivery to roadside mailboxes, cbus, etc.)

Highway Contract Route to roadside
mailboxes

Effect on Employees (Include Career/Noncareer Employees):

Postmaster has retired. PMR will be offered position at an associate office if a position is
available or they will be
terminated.

Hours of Operation:

Retail: Saturday: 7:30 - 9:00 a.m. Monday – Friday 7:30 a.m. - 4:30 p.
m.

(Include lunch break)

Lobby: Saturday: 7:30 - 9:30 a.m. Monday – Friday 7:30 a.m. - 4:30 p.
m.

Number of Customers Served:

_____ General Delivery
72 _____ Post Office Box
_____ City Delivery
_____ Rural Route
134 _____ Highway Contract Route (HCR)

_____ Intermediate Rural Route
59 _____ Intermediate HCR
265 _____ Total Customers

B. Administrative Office

Name Buckhannon State: WV ZIP Code: 26201
EAS Grade: 20 Finance Number: 551128 Miles Away: 34
PO Boxes Available: _____

Hours of Operation

Retail: Saturday: 9:00 a.m. - 12:00 noon Monday – Friday 8:30 a.m. - 4:30 p.m.
(Include lunch break)
Lobby: Saturday: 24 hours Monday – Friday 24 hours

NOTICE OF POST EMERGENCY SUSPENSION (continued)

C. Nearest Office

Name Diana State: WV ZIP Code: 26217
EAS Grade: 11 Finance Number: 552190 Miles Away: 11
PO Boxes Available: _____

Hours of Operation

Retail: Saturday: 9:30 - 11:30 a.m. Monday – Friday 8:00 a.m. - 4:30 p.m.
(Include lunch break)
Lobby: Saturday: 9:00 - 11:30 a.m. Monday – Friday 8:00 a.m. - 4:30 p.m.

D. Postmaster Organization Notification:

Notified: Yes No Date of Notification: May 20, 2009

E. Plan of Action (HQ must be notified within 90 days):

Plan to officially
close.

Prepared by: Teresa F. Price Date: _____
Title: Appalachian District Post Office Review Coordinator
Telephone No.: (304) 561-1052 Fax No.: (304) 561-1033

Approved By:

_____ Date: _____
Joseph W. Meimann

(A) Appalachian District Manager

Telephone No; (304) 561-1200

Fax No.: (304) 561-1209

FAX TO:

Lori M. Wigley

Manager, Customer Service Operations

Retail and Delivery

U.S. Postal Service Headquarters

475 L'Enfant Plaza, S.W., Room 5621

Washington, DC 20260-5621

FAX: (202) 268-5102

cc: Area PO Review Coordinator

District PO Review Coordinator

National League of Postmasters

National Association of Postmasters of the United States

Teresa Price

Retail Specialist

P. O. Box 59601

Charleston, WV 25350-9601

304-561-1052

ATTACHMENT #3

Property Detail Report

Property Description

Fin/Sublocation: 553420-001	Status: Terminated	Chargeable Fin: 553420
PO-Unit Name: HACKER VALLEY-MAIN OFFICE	District: Appalachian	Postmaster: JOHN HUHES
Address: 4789 HACKER VALLEY RD	County: WEBSTER	PM Phone: 304-493-6305
City/St/ZIP: HACKER VALLEY, WV 26222-9998	CAG: K	FDB ID:
Comments: L M CARTER 493-6464 TOILET - YES		AMS Locale:

General Information

Type Qtrs: Main Office	Maint Resp: Landlord	Ann. \$0.00	Land Cost: \$0.00
Property Use: Customer Service	Electricity: USPS	Depreciation: Remaining Yr:	Bldg Cost: \$0.00
Cust Svc Code: Delivery and Retail	Water: Landlord	Accum \$0.00	Land FMV: \$0.00
AMS Type:	Heat: USPS	Depreciation: Undepreciated \$0.00	Bldg FMV: \$0.00
AMD Subtype:	Trash: USPS	Amt: Book Value: \$0.00	Land Owner: Standard Lease, Fixed Term
Acquisition: Leased, New Construction	Sewerage: Landlord	Asbestos: Not Applicable	Bldg Owner: Standard Lease, Fixed Term
Construc.: Brick/Block	Custodial: USPS	Historic: Unknown	Last Inspec.: 01/29/2008 MIGRATION
Dt Land Acquired: 07/01/1965	Snow: USPS	Indian Nation: No	Next Inspec.: 01/29/2009 MIGRATION
Dt Bldg Occupied: 07/01/1965		Handicap Access.: Non-Accessible	

Space Survey

Net Interior: 333	# Stories: 1	Total # Carriers: 0	PO Box SF: 300
Site: 8,213.00	# Cust Parking:	Emp Complement: 1	Counter SF: 420
Total Cust Svc & PO Box Lobby Areas: 40.00	# Emp Parking: 0	Walk in Rev: 27126	Excess SF: -923
Delivery Wkroom Area: 167.00	Freight Elevators: 0	# APC: 0	USPS Occ SF:
Date Last Measured:	Cust Elevators: 0		% Occ by USPS:

Energy

A/C: None Provided	Exclude from Audit:	Top 500:
Prim Fuel: Electricity	Last Audit Date:	Include on DOE Rpt:
Sec Fuel: None	Last Audit Type:	

Active Lease Data

Lease Eff Date:	RO Days Notice:	PO Type:
Lease Exp Date:	Term Days Notice:	PO Date:
Annual Rent:		PO Price:

Landlord Name:	Tax ID:
Address1:	Phone:
Address2/3:	
City, State, ZIP:	

Lease Option (Active ID)

Lease Options (not active)

Type	Eff. Date	Exp. Date	Status	Ann. Rent	Type	Eff. Date	Exp. Date	Status	Ann. Rent
					Base			Unused	\$0.00
					Base	07/03/1994	07/02/1999	Completed	\$1,920.00
					Base	07/03/1999	07/02/2004	Completed	\$1,920.00
					Renewal	07/03/2004	07/02/2009	Completed	\$2,016.00
					Termination	07/02/2009		Completed	