

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
ANSWER IN OPPOSITION TO MOTION OF THE PUBLIC REPRESENTATIVE
TO HOLD PROCEEDING IN ABEYANCE
(July 29, 2009)

On June 20, 2009, Petitioner filed with the Postal Regulatory Commission (Commission or PRC) a Participant Statement styled as, *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 constituted a discontinuance under 39 U.S.C. § 404(d). The Commission responded on July 1, 2009, by issuing a *Notice of Filing* transmitting the Petition regarding the Hacker Valley 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) to consider the Petition. In accordance with the established procedural schedule, the Postal Service filed a *Motion to Dismiss* on July 15, 2009, arguing that the Petition constitutes a premature appeal of an alleged discontinuance of the Hacker Valley Post Office since operations were suspended, not discontinued.

On July 22, 2009, Mr. Richard Oliver, a designated Public Representative, filed a *Response in Opposition to the United States Postal Service Motion to Dismiss Proceeding* (PR Opposition), and a *Motion to Hold Proceeding in Abeyance*(PR Motion), arguing that "If the Postal Service is correct that operations have been 'suspended' and not 'discontinued,' then a grant of the [Postal Service] Motion to Dismiss would be appropriate." PR Response at 2.

The Postal Service files this *Answer in Opposition to the Motion of the Public Representative to Hold Proceedings in Abeyance*. While the Postal Service Motion to Dismiss

provided several interwoven fact sources to demonstrate that operations have merely been suspended—including the May 22, 2009, “Dear Customer” letter announcing, in its first sentence, “The Hacker Valley Post Office will be suspended on June 20, 2009—the PR hypothesizes his own view of the facts to bootstrap an argument that proceedings should be suspended pending more facts he can conceive the Postal Service might be able to provide.¹

The Postal Service does not accept the PR’s invitation to argue about the facts in this case, or facts that might conceivably be part of this case. Procedurally, however, operations in the Hacker Valley Post Office have merely been suspended, not discontinued.

Attachment 1 to this pleading consists of a Declaration executed by Kimberly I. Matalik, who was recently introduced to the Commission via her testimony, USPS-T-2, in PRC Docket No. N2009-1, *Station and Branch Optimization and Consolidation, 2009*. As reflected in that testimony and the Declaration, witness Matalik is the Program Manager responsible for the Post Office Discontinuance Program. Her Declaration established that:

- 1) Operations in the Hacker Valley Post Office have been suspended;
- 2) Operations in the Hacker Valley Post Office have not been discontinued;
- 3) When field postal officials suspend operations in a Post Office, they have 90 days within which to submit a plan to Headquarters documenting whether an office will be re-opening, studied for discontinuance, or otherwise; and
- 4) That no plan for the Hacker Valley Post Office is yet due and none has been forwarded to Headquarters by field officials.

Hence, in fulfillment of the PR’s position that “If the Postal Service is correct that operations have been ‘suspended’ and not ‘discontinued,’ then a grant of the [Postal Service] Motion to Dismiss would be appropriate,” as confirmed by the single most expert USPS employee with knowledge of both what procedural steps should occur and what steps have occurred, the Postal Service renews its motion that this proceeding be dismissed. Such

¹ Any decision by the PRC pursuant to 39 U.S.C. § 404(d) to remand to the Postal Service or affirm the underlying decision must rely for its facts on the administrative record created pursuant to 39 U.S.C. § 404(d)(3). See 39 U.S.C. § 404(d)(5).

dismissal ought not be “with prejudice” since, as explained by Declarant, an appeal pursuant to § 404(d) and pertinent to the Hacker Valley Post Office could yet become timely and ripe.

CONCLUSION

WHEREFORE, the United States Postal Service respectfully requests that the Commission deny the *Motion of the Public Representative to Hold Proceeding in Abeyance* and grant the Postal Service Motion to Dismiss this proceeding.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

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Law Clerk

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DECLARATON
(July 28, 2009)

My name is Kimberly I. Matalik. I am an Operations Specialist in Retail Operations, Delivery and Post Office Operations Group, at United States Postal Service Headquarters in Washington, DC. I am currently the Program Manager for the Post Office Discontinuance Program. I am a witness in PRC Docket N2009-1 in support of the Postal Service's Station and Branch Optimization and Consolidation Initiative, 2009; my testimony in that docket describes my background in greater detail. USPS-T-2/N2009-1.

I am responsible for processing internal notices when operations in a Post Office are suspended, and I exercise administrative oversight of the steps necessary for formal discontinuance of a Post Office's operations. I am also responsible for monitoring field officials' follow up to USPS Headquarters within the allotted 90-day period for a District Manager to notify the Vice President, Delivery and Post Office Operations, plans for an office whose operations have been suspended. See Handbook PO-101, *Post Office*

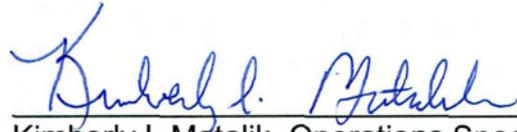
Discontinuance Guide, § 617.¹ (I also understand that Handbook PO-101 either has already been filed in its entirety, or soon will be, in PRC Docket No. N2009-1.)

Operations were recently suspended in the Hacker Valley, West Virginia Post Office. I understand from counsel that claims are being made in that docket that operations have, in fact, been discontinued, not just suspended, in the Hacker Valley Post Office. Such claims are false; operations have only been suspended. To this point, no plan for follow-up action has yet been provided to Headquarters by the Appalachian District.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

7/28/09

Date



Kimberly I. Matalik, Operations Specialist
Retail Operations
United States Postal Service Headquarters

¹ Section 617 states, "The district manager ... must determine a plan of action to restore service, secure suitable alternate quarters, take other necessary corrective action, or initiate a discontinuance study within 90 days (3 months). That plan of action must be sent in writing to the vice president, Delivery and Retail, no later than the 90th day."