

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Tony L. Hammond, Vice Chairman;  
Mark Acton;  
Dan G. Blair; and  
Nanci E. Langley

Hacker Valley Post Office  
Hacker Valley, WV 26222  
(Retha Casto, Petitioner)

Docket No. A2009-1

ORDER ON APPEAL OF HACKER VALLEY, WEST VIRGINIA  
POST OFFICE CLOSING

(Issued October 19, 2009)

I. INTRODUCTION AND SUMMARY

On June 30, 2009, Retha Casto (Petitioner) petitioned the Commission seeking review of the Postal Service's actions regarding the Hacker Valley post office. The Commission gave notice of this appeal in Order No. 238, issued July 6, 2009.<sup>1</sup> The Postal Service subsequently moved to dismiss this proceeding, arguing the Commission lacks jurisdiction to consider an appeal under 39 U.S.C. 404(b).<sup>2</sup> After

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<sup>1</sup> Notice and Order Accepting Appeal and Establishing Procedural Schedule, July 6, 2009.

<sup>2</sup> United States Postal Service Motion to Dismiss Proceeding, July 15, 2009 (Motion to Dismiss).

considering the record, the Commission has concluded that this appeal should not be dismissed.

This case involves two questions: (1) whether the Postal Service has by its actions closed the Hacker Valley post office; and (2) if that office is closed, did the Postal Service follow the appropriate procedures before closing the Hacker Valley post office. The Commission finds that the Hacker Valley post office has been closed, at least temporarily, and that proper procedures to close that facility have not yet been completed.

## II. BACKGROUND

The Commission addresses this case in the context of a Postal Service facing extraordinary financial challenges. Last year, the Postal Service faced serious cash flow problems and operating losses likely to be in the neighborhood of \$7 billion necessitating last minute Congressional action to allow a one-time deferral of \$4 billion of payments.

The Postal Service properly is exploring all avenues to reduce or eliminate unjustified expenses. As part of that effort, it has requested an advisory opinion from the Commission on the sufficiency of its process for closing stations and branches in urban and suburban areas. That request, Docket No. N2009-1, is currently pending. In that case, the Postal Service has taken the position that the protections of 39 U.S.C. 404(d) apply only to citizens served by retail facilities it has designated as "Post Offices" for its internal administrative purposes, and do not apply to stations and branches. The essential issue before the Commission in this case is whether the Postal Service acted to deny those protections to citizens receiving service from a "Post Office," specifically, the post office serving Hacker Valley, WV.

### III. PROCEDURAL HISTORY

The Hacker Valley post office is an EAS Grade 11 office with 3 Highway Contract Routes, 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. *Id.* at 2.

The Postal Service acknowledges that on July 20, 2006, it was informed by letter that the lessor of the facility housing the Hacker Valley post office did not intend to renew the Postal Service's lease.<sup>3</sup> The record further contains a letter from the Postal Service that references a phone conversation which took place on February 24, 2009 between the Postal Service and the lessor.<sup>4</sup> The letter states that during that conversation the lessor reiterated her request for the Postal Service to vacate the facility at the end of the current lease. *Id.*, Attachment 3. On March 16, 2009, the Postal Service provided the lessor with a notice of termination stating that the lease would expire July 2, 2009. *Id.*, Attachment 2.

On May 22, 2009, the Postal Service sent a "Dear Postal Customer" letter to the community notifying it that operations at the Hacker Valley post office would be suspended. Motion to Dismiss, Attachment 1. The letter announced a community meeting to explain how postal services would be impacted. The Community meeting was held on June 8, 2009 in the parking lot of the senior citizens' building. Representatives in attendance for the Postal Service included Teresa Price, Retail Specialist and Post Office Review Coordinator, and Theresa Mullins, Manager of Post Office Operations.

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<sup>3</sup> Response of the United States Postal Service to Commission Information Request No. 1, August 14, 2009 (Postal Service Response to CIR No. 1).

<sup>4</sup> Response of Retha Casto, Petitioner, and the Northern Webster County Improvement Council *ad hoc* Hacker Valley Post Office Preservation Committee, to USPS Response to Commission's Information Request No.1, September 8, 2009 (Petitioner's Response to CIR No. 1).

On June 23, 2009, the Postal Service sent a letter to the lessor regarding an apparent offer made by the lessor to extend the lease. Petitioner's Response to CIR No. 1, Attachment 3. The letter states that the Postal Service received a fax on June 22, 2009 offering to extend the lease of the facility through September 30, 2009. The June 23, 2009 letter references the February 24, 2009 telephone conversation between the Postal Service and the lessor, and declines the offer. *Id.*

On June 30, 2009, services provided at the Hacker Valley post office were suspended and a petition seeking the Postal Regulatory Commission's review of the Postal Service's actions was received by the Commission.<sup>5</sup>

#### IV. CONTROLLING STATUTORY PROVISIONS

The Postal Service is required to "provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining." 39 U.S.C. 101(b). Congress specified that no post office may be closed solely for operating at a deficit, *id.*, and established a statutory procedure that the Postal Service must follow prior to closing or consolidating a post office.

Under the terms of 39 U.S.C. 404(d)(1), prior to any decision as to the necessity for closing or consolidating any post office, the Postal Service must provide adequate notice so that persons served by the office will have an opportunity to present their views. The law further requires the Postal Service to consider five enumerated factors in making a decision on whether to close a post office, the first of which is "the effect of such closing or consolidation on the community served by such post office".

These statutory provisions establish as national policy that citizens should have the opportunity to convey their concerns to the Postal Service before their local post office is closed, and most important, that the Postal Service will fairly consider those concerns prior to making a decision to close that facility.

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<sup>5</sup> The appeal letter was postmarked June 20, 2009 (Participant Statement). By operation of 39 U.S.C. 404(d)(6), the appeal is timely.

## V. PARTICIPANT PLEADINGS

Petitioner contends that the Hacker Valley post office should not be closed, but should instead be relocated to another facility in the community. Petitioner states there “should be at least one [post office] left in [the] northern part of Webster County.” She argues that the Postal Service failed to seek alternative sites to relocate the Hacker Valley post office in the community.<sup>6</sup> Petitioner suggests that the Postal Service could utilize a nearby building which is currently being renovated. *Id.* She contends that the community should have had a voice in the closing process and that it did not. Petitioner requests that the Postal Service be directed to consider the people who will be impacted by the closure of the Hacker Valley post office instead of the money. *Id.* at 2.

Attached to the Participant Statement is a local newspaper article entitled “Citizens Gather to Address Concerns About Suspension of Hacker Valley Post Office” dated June 10, 2009.

On July 15, 2009, the Postal Service filed a motion to dismiss this proceeding in response to the Commission’s order that the Postal Service file the administrative record for this appeal. The Postal Service explains that since the Postal Service has not initiated a discontinuance study or issued a final determination to close the Hacker Valley post office, it does not have an administrative record. Motion to Dismiss at 1. The Postal Service argues that Petitioner lacks standing to bring this action under 39 U.S.C. 404(d)(5) because no final determination to close the office has been made. *Id.* at 3. The Postal Service adds that Petitioner likely misconstrued the May 22, 2009 notice of suspension as a final determination to close the Hacker Valley post office. *Id.* at 3-4.

The Postal Service attaches three documents regarding the suspension to its Motion to Dismiss. Attachment 1 is the May 22, 2009 “Dear Postal Customer” letter to the community describing the impending suspension and identifying nearby locations

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<sup>6</sup> Participant Statement, PRC Form 61, at 1.

where postal retail services could be obtained. This letter also notifies the public of a community meeting at which the Postal Service would explain its plans, and solicits community comments concerning possible alternate means of providing postal and other services. Attachment 2 is a Notice of Post Office Emergency Suspension that indicates the justification for the suspension. Attachment 3 is a Property Detail Report describing the physical characteristics of the facility and lease details.

Thirty-nine individuals submitted comments in support of the petition. Additionally, pleadings in opposition to the Motion to Dismiss were filed by the Public Representative and the National Association of Postmasters of the United States.

## VI. COMMISSION ANALYSIS

The Commission has jurisdiction to hear appeals of post office closings pursuant to 39 U.S.C. 404(d). The Postal Service contends that Petitioner lacks standing to bring this case and that the Commission does not have jurisdiction to hear this case because no formal determination has been made to close the Hacker Valley post office. *Id.* at 3. Petitioner and patrons served by the Hacker Valley post office are convinced and have reason to believe that the Hacker Valley post office has been closed. The National Association of Postmasters of the United States agrees and argues that the proper procedures for closing were not followed.<sup>7</sup> The Public Representative points out that from the perspective of residents served by the Hacker Valley post office, the distinction between an indefinite suspension and a permanent discontinuance is academic.<sup>8</sup>

The Commission agrees with the Postal Service that there has not been a formal, final official determination by the Postal Service to close or consolidate the Hacker Valley post office. Nevertheless, the actions of the Postal Service have left the citizens of Hacker Valley without a post office. Several additional conclusions also are

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<sup>7</sup> Response of the National Association of Postmasters of the United States Regarding United States Postal Service Response to Commission Information Request No. 1, September 8, 2009.

<sup>8</sup> Response of the Public Representative in Opposition to United States Postal Service Motion to Dismiss Proceeding, July 22, 2009.

pertinent. First, the Postal Service should refrain from improper use of the Emergency Suspension process. Second, such suspensions are prejudicial to a fair closing process. Third, if and when the Postal Service makes a determination to close the Hacker Valley post office, its patrons will have another opportunity to appeal to the Commission.

The record indicates that the Postal Service was notified that its lease on the building housing the Hacker Valley post office would not be renewed almost two years before the lease expired. The record further indicates that the lessor reiterated this information to the Postal Service in a February 2009 telephone conversation, slightly more than four months before the lease expired. In mid-March 2009, the Postal Service wrote the lessor confirming that it would vacate by July 2, 2009. These facts undermine any claim that the suspension of service to the Hacker Valley community reflected emergency action.

Postal Service Handbook PO-101, section 213.2, provides instances when an emergency suspension may be necessary:

The cancellation of a lease or rental agreement when no suitable alternate quarters are available in the community, a fire or other natural disaster, severe health or safety hazards, . . . .

The lease in Hacker Valley was not cancelled, and the Postal Service had almost two years' notice to explore whether suitable alternative quarters could be obtained before the lease expired.

In response to questions from the Commission, the Postal Service reported that in the past five years it has suspended 97 post offices because their leases expired. Of those, only two have been reopened. The communities previously served by the remaining 95 post offices have not had their local retail facility restored. Twenty-five of

those offices were eventually formally closed, while the remainder reside in a form of limbo.<sup>9</sup>

This history strongly suggests that the Postal Service is using its suspension authority to avoid the explicit Congressional instructions to hear and consider the concerns of patrons before closing post offices. In the factual situation present in this docket, the Postal Service has acknowledged it had ample notice that its lease would not be renewed.

The Postal Service reports it now has decided to initiate the process of determining whether or not to formally close the Hacker Valley post office.<sup>10</sup> In due course, a notice that the Postal Service is considering whether to close the Hacker Valley post office, and inviting comments, will be displayed in the post office of some other community which has been given responsibility for providing delivery to Hacker Valley addresses. There is some question of whether Hacker Valley residents will be able to see such a notice conveniently.<sup>11</sup> Many residents may already have been forced to change addresses or business patterns as a result of the “suspension.” It seems evident that the postal services received by the citizens of Hacker Valley have been disrupted, and that responses to an eventual notice that the post office may be formally closed will be significantly different than if the Postal Service had adhered to the spirit of 39 U.S.C. 404(d) and sought comments before closing that facility.

## VII. POTENTIAL REMEDIES

In addition to directing the Postal Service to obtain and consider the views of users prior to closing or consolidating post offices, Congress provided for this Commission to hear timely appeals of Postal Service decisions to close or consolidate.

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<sup>9</sup> Postal Service Response to CIR No. 1, Questions 6, 7, 8 and 9. The Postal Service reports that it has begun the process for formally closing 5 of these 70 remaining post offices.

<sup>10</sup> Response of United States Postal Service to Commission Information Request No. 2, September 29, 2009.

<sup>11</sup> Comments filed by a resident indicate the nearest post office is an hour's drive away.

39 U.S.C. 404(e). By statute, the Postal Service may not close a facility while the process, including any appeal, is ongoing. In this way, Congress preserves service while the statutory process is followed.

By utilizing its suspension authority to terminate service in the Hacker Valley community, the Postal Service has ignored the Congressional intent to preserve service while the process for evaluating whether or not to close a post office is ongoing.

The law grants the Postal Service the specific authority to determine the need for post offices, and so long as it follows the process enumerated in 39 U.S.C. 404(d), to close facilities as it deems necessary. While this Commission may remand a decision to close for failure to adhere to the statutory process, it may not modify a decision to close a post office and require that the post office remain open. 39 U.S.C. 404(d)(5).

It is possible that once the Postal Service develops and evaluates a full administrative record, it will decide not to close the Hacker Valley post office. In that event, it will have to obtain a new post office site, and the citizens of Hacker Valley will have suffered needless disruption. Alternatively, the Postal Service may determine to formalize the closure that took place on June 30, 2009. After such a decision, the matter could again be brought to this Commission for review;<sup>12</sup> however, the fact remains that no retail facility currently operates in Hacker Valley.

Petitioner requests that the Postal Service be directed to restore a retail facility to Hacker Valley. *Id.* The Commission has the discretion to suspend the effectiveness of a determination of the Postal Service to close a post office until the final disposition of the appeal. However, in the current circumstances, such an order would be essentially meaningless, as the Postal Service will almost certainly conclude the 120-day process for determining whether or not to formally close the Hacker Valley post office before it could plan and complete the steps necessary to return service to the community.

The Postal Service is in the best position to evaluate whether one or a combination of options might be employed to provide an alternative retail presence

within Hacker Valley while the discontinuance study is ongoing. Therefore, the Postal Service is to consider what action can be taken to provide the citizens of Hacker Valley with a level of continuity of service consistent with the stated expectations of 39 U.S.C. 101(b) and 404(d).

On the basis of the narrow record developed in this appeal, the Commission cannot find that the Postal Service is intentionally circumventing the policies of 39 U.S.C. 404(d). However, the Commission recognizes that such a practice may be ongoing, and it will initiate action to develop a more complete record on the subject so that it can fulfill its responsibility under the Postal Accountability and Enhancement Act, section 701, to submit reports to the President and Congress recommending legislation necessary to improve the effectiveness of the postal laws of the United States.

*It is ordered:*

1. The United States Postal Service Motion to Dismiss Proceeding, filed July 15, 2009, is denied.
2. The record in this appeal will be incorporated into any subsequent appeal of a final Postal Service decision to close or consolidate the Hacker Valley, West Virginia post office.
3. The Postal Service is to consider what action can be taken to provide the citizens of Hacker Valley with a level of continuity of service consistent with the stated expectations of 39 U.S.C. 101(b) and 404(d).

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<sup>12</sup> If the decision is to close the Hacker Valley post office and a new appeal is filed, materials in the current record will be incorporated into the record for that subsequent appeal.

4. Except to the extent granted or otherwise disposed of herein, all motions, exceptions, and other outstanding requests filed in Docket No. A2009-1 hereby are denied.

By the Commission.

Shoshana M. Grove  
Secretary