

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

In the Matter of:

**Graves Mill Post Office
Graves Mill, Virginia**

Docket No. A 2011-3

Opposition to Motion of United States Postal Service to Dismiss Proceedings
(December 8, 2010)

In Order No. 596, the Postal Regulatory Commission (Commission) accepted my appeal of the closing of the Graves Mill Post Office located in Graves Mill, Virginia, and instituted a proceeding under 39 U.S.C. 404(d)(5), designating the case as Docket No. A2011-3. Order No. 596 also directed the Postal Service to “file the administrative record in this appeal, or otherwise file a responsive pleading to the appeal, by December 7, 2010.”

On December 7, 2010, the Postal Service responded to the Commission’s order by filing a pleading entitled “Motion of United States Postal Service to Dismiss Proceedings.” In effect, the Postal Service argues that my appeal was untimely, because it was not “filed within the thirty-day period for submitting appeals set forth in 39 U.S.C. § 404(d)(5).” Motion, p.2. However, the Postal Service is mistaken, and the appeal should be heard.

The procedural history surrounding the closing of the Graves Mill Post Office is set forth at length in my petition for review dated November 15, 2010, and docketed on November 22, 2010, and will not be repeated here. It suffices to observe that the Commission apparently understood that because the Postal Service did not follow proper procedures in posting the notice of its Final Determination – the very purpose of which is to alert customers that the time to

appeal the decision to close the Graves Mill Post Office had commenced – the period to appeal had not yet expired, and my appeal was therefore timely and accepted by the Commission.

In footnote 1 of its Motion, the Postal Service states that “The Wolftown, Virginia and Madison, Virginia Post Office provided alternative service to the temporarily suspended Graves Mill Post Office. Therefore, the posting of the Final Determination at these post offices was the proper procedure under 39 C.F.R. § 241.3(d)(4)(v).” Although the first sentence may be factually correct, the conclusion set forth in the second sentence is both incorrect and misleading.

As the lawyers for the Postal Service are surely aware, § 241.3(d)(4)(v) has nothing to do with the proper procedure for posting the notice of the Final Determination. Rather, that section relates only to making the **record** available during the **pendency** of the consideration process. Specifically, it states that “A complete copy of the record must be available for public inspection during normal office hours at the post office proposed for discontinuance or at the post office providing alternative service, if the office to be discontinued was temporarily suspended, beginning no later than the date on which notice is posted and extending through the comment period.”

However, a completely different provision establishes the proper procedure for posting the **notice** of the **Final Determination**, namely 39 C.F.R. §241.(g)(1)(i). The heading of subsection (g) is “Implementation of final determination,” and the heading of paragraph (1) is “Notice of final determination to discontinue post office.” Importantly, subparagraph (i) directs the Postal Service to “Provide notice of the Final Determination by posting a copy prominently in the affected post office or offices.” Here, the “affected post office” was obviously the **Graves Mill Post Office** – the one that the Postal Service had made a Final Determination to close.

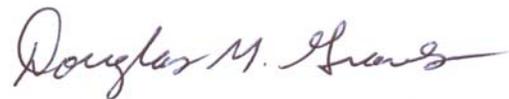
It cannot credibly be argued that the “affected post office” refers to any post office other than the Graves Mill Post Office. However, by citing a provision (§ 241.(d)(4)(v)) that governs a completely different stage of the proceedings (namely, the availability of the record), the Postal Service leaves the impression that the Wolftown and Madison post offices are instead the “affected post office.” But as the Postal Service itself states, those post offices merely provided

alternative service during the temporary suspension of the post office to be discontinued, and it is the post office to be discontinued, namely the Graves Mill Post Office, that is the “affected post office.”

Because the Postal Service does not allege (as it cannot) that the notice of Final Determination was posted at all, let alone “prominently,” at the Graves Mill Post Office, the Postal Service has failed to comply with its own regulations. Accordingly, the Commission should find that the notice of the determination to close the Graves Mill Post Office was never “made available” to me or to other persons served by the Graves Mill Post Office, as required by 39 U.S.C. § 404(d)(3). The Commission should therefore find that my initial petition for review was timely under 39 U.S.C. § 404(d)(5).

For all of these reasons, the Motion to Dismiss Proceedings should be **denied**, and the Commission should order the Postal Services to file the administrative record within two (2) business days of the date of the Commission’s disposition of the Motion.

Respectfully submitted,

A handwritten signature in cursive script that reads "Douglas M. Graves". The signature is written in dark ink and is positioned above the printed name of the petitioner.

Douglas M. Graves, Petitioner