

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

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Nooksack Post Office, )  
Nooksack, Washington 98276 )  
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Docket No. A2011-17

ANSWER OF THE PUBLIC REPRESENTATIVE  
IN OPPOSITION TO POSTAL SERVICE MOTION TO DISMISS

(June 7, 2011)

Pursuant to rule 21 of the Commission's rules of practice, the Public Representative hereby files its Answer in opposition to the Motion by the Postal Service to dismiss this proceeding.<sup>1</sup>

The Postal Service bases its Motion to Dismiss upon two grounds. First, the Postal Service repeats its standing position that the provisions of 39 USC 404(d)(5) authorizing Commission review of post office closings do not apply to the closing of the Nooksack, Washington facility because that facility is not a "post office", but, rather a classified station. Motion to Dismiss at 3-4. Second, the Postal Service argues that the Nooksack facility has not been closed, but suspended on an emergency basis. *Id.* at 3, 4-5. The Postal Service asserts that only closures, not emergency suspensions, are subject to review by the Commission. *Id.* Neither of these grounds supports dismissal of the pending appeal.

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<sup>1</sup> Motion of United States Postal Service to Dismiss Proceedings, May 31, 2011 (Motion to Dismiss).

I. The Commission Has Jurisdiction Over Station and Branch Closures

The Commission has repeatedly rejected the Postal Service's assertions that stations and branches are not "post offices" under section 405(d)(5). Docket No. A2010-3, *East Elko Station*, Order No. 477 (June 22, 2010) at 5-6; and Docket No. N2009-1, Advisory Opinion Concerning the Process for Evaluating Closing Stations and Branches, March 10, 2010 at 65-66. In its Motion to Dismiss, the Postal Service has offered no new arguments to support its position. Accordingly, this ground for dismissal should be summarily rejected.

II. The Postal Service Has Failed to Establish that the Closure of the Nooksack Post Office is an Unreviewable Emergency Suspension

In seeking dismissal, the Postal Service argues that the closure of the Nooksack facility is in reality an emergency suspension, not a permanent discontinuance. Not only is this argument unsupported, but it is contradicted by the Postal Service's own actions and by prior Postal Service filings in this proceeding. Nor should the Postal Service be permitted to use its own premature termination of the Nooksack Post Office lease to transform an obvious discontinuance into an emergency suspension.

A. The Record Developed To Date Clearly Demonstrates that the Postal Service Has Made a Reviewable Discontinuance Determination and Has Not Imposed an Non-Reviewable Emergency Suspension

On April 1, 2011, a notice was posted at the Nooksack Post Office advising patrons of a "possible change in the way postal services are provided...." City of Nooksack Petition for Review, May 16, 2011 (Petition for Review) at Exhibit B. The notice also indicated that a public meeting was to be held on April 7, 2011, to discuss alternatives to existing postal services. *Id.*

On April 2, 2011, postal patrons received a questionnaire regarding their mailing practices. The questionnaire indicated that the Postal Service was considering closure

of the Nooksack Post Office. There was no mention in the questionnaire of any need for an emergency suspension of the Nooksack Post Office's operations.

On April 7, 2011, the Postal Service convened the public meeting announced in its April 1, 2011 notice. There is no evidence that the need for an emergency suspension was raised by Postal Service personnel at that meeting. Instead, postal patrons were invited to submit comments on the possible closure of the post office. Petition for Review at 5.

On May 2, 2011, the City of Nooksack received a letter advising the City and other postal patrons that the Nooksack Post Office would be vacated May 27, 2011, and requesting patrons to choose whether they wished to have their mail delivered to the Everson, Washington Mail Post Office or to a curbside box. Petition for Review, Exhibit A. The letter makes no mention of any need for an emergency suspension. The clear message given by the letter was that the Nooksack Post Office was being closed—period.

During the week of May 16, 2011, work began on the physical relocation of post office boxes from the Nooksack Post Office to the Everson Post Office. Affidavit of Virginia Radder, May 20, 2011. On May 18, 2011, the Postal Service posted a notice in the Nooksack Post Office advising patrons "that retail operations at the Nooksack Office will cease at the close of business, May 27<sup>th</sup>, 2011 and delivery to the Post Office boxes will cease after May 28<sup>th</sup>, 2011." *Id.* at Exhibit I.

The foregoing facts make clear that, from the outset, the objective of the Postal Service was to close the Nooksack Post Office. This conclusion is reinforced further by statements made by the Postal Service in its pleadings in this proceeding. For example, in its response to the City of Nooksack's application to suspend closure of the Nooksack Post Office pending completion of the instant review proceeding, the Postal Service argues, *inter alia*, that it has made "numerous arrangements" to implement "the

final determination....”<sup>2</sup> The “final determination” referred to by the Postal Service is its final determination to close the Nooksack Post Office. One of the “numerous arrangements” expressly identified by the Postal Service to implement the “final determination” is the Postal Service’s termination of the lease for the Nooksack Post Office. *Id.* at 3-4.

B. The Postal Service’s Decision to Terminate the Nooksack  
Post Office Lease Does Not Convert a Discontinuance  
Determination Into an Emergency Suspension

Less than 24 hours after filing its Response to the Nooksack Suspension Application, the Postal Service filed a supplemental response in which it announced that it had “learned recently” that the discontinuance was, in reality not a discontinuance at all, but a suspension and, as such, non-reviewable.<sup>3</sup> This attempt to recharacterize its actions as a non-reviewable suspension is but another thinly veiled attempt to circumvent the Commission’s jurisdiction to review post office closings on the basis of a lease termination.<sup>4</sup> In this case, the Postal Service itself precipitated the “emergency” by invoking its right to terminate the lease on 30 days’ notice notwithstanding the landlord’s willingness to continue leasing the facility on a month-to-month basis.<sup>5</sup> The

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<sup>2</sup> Response of United States Postal Service to Petitioner’s Application for Suspension of Discontinuance for the Nooksack Branch, Nooksack, Washington 98276, May 27, 2011, at 3 (Response to the Nooksack Suspension Application).

<sup>3</sup> Supplemental Response of United States Postal Service to Petitioner’s Application for Suspension of Discontinuance for the Nooksack Branch, Nooksack, Washington 98276, May 27, 2011 (Supplemental Response).

<sup>4</sup> In Docket No. A2009-1, *Hacker Valley Post Office*, the Commission was presented with an attempt by the Postal Service to use its emergency suspension authority to close a post office summarily without observing the discontinuance procedures by announcing an emergency suspension 5 weeks prior to the date of a lease termination of which the Postal Service had been aware for almost 3 years. Docket No. A2009-1, Order on Appeal of Hacker Valley, West Virginia Post Office Closing, October 19, 2009, at 3-4 (Order No. 319).

<sup>5</sup> Affidavit of Anne Blair in Response to Motion of United States Postal Service to Dismiss Proceedings, June 2, 2011, at Exhibit J (Blair Affidavit); and Petition for Review at Exhibit F.

Postal Service's notice of termination was given on April 1, 2011. Petition for Review at Exhibit C. This was the same day the Postal Service posted its initial notice in the Nooksack Post Office of a "possible" change in the way postal service would be provided. The reality is that the lease termination that the Postal Service now attempts to use to bootstrap its way around the instant Commission review proceedings was part-and-parcel of a final determination to close the Nooksack Post Office. As the Postal Service previously admitted, the lease termination was one of the "numerous arrangements" designed "to implement" the "final determination." Response to the Nooksack Suspension Application at 3-4.

WHEREFORE, the Public Representative requests the Commission to deny the Postal Service's Motion to Dismiss.

Respectfully Submitted,

/s/ Richard A. Oliver

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