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UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

Before

Vice Chairman LeBlanc
Commissioners Haley, Quick and Schley

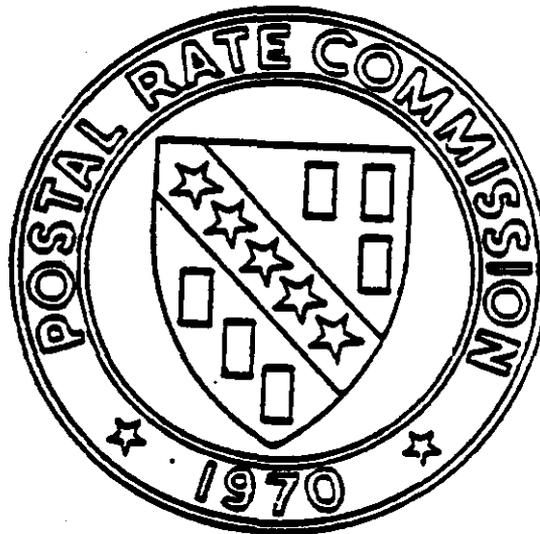
In the Matter of:

Waka, Texas 79093

(Mr. and Mrs. Carl Carter et al.,
Petitioners)

: Docket No. A94-1

:



COMMISSION OPINION AFFIRMING DECISION
UNDER 39 U.S.C. § 404(b)

CONCURRING OPINION OF COMMISSIONER QUICK

DISSENTING OPINION OF COMMISSIONER SCHLEY
JOINED IN BY VICE CHAIRMAN LEBLANC

Washington, D.C. 20268-0001
(February 4, 1994)

I. Introduction and Summary

This opinion is issued pursuant to section 404(b) of the Postal Reorganization Act [39 U.S.C. § 404(b)]. On October 8, 1993, the Commission received an appeal letter from Mr. and Mrs. Carl Carter concerning the Postal Service's decision to consolidate the Waka, Texas, post office and replace it with a contractor-operated "community post office." Consistent with our practice, the Commission established Docket No. A94-1 for review of the Postal Service's record. The Commission has received additional letters opposing the Postal Service's decision from Susan H. Johnson, Martin Gauby, Edna Scroggs, Sandra S. Drake, Michael L. V. Ladd, Maurine Stinson and LaVerne Arnold. Mr. and Mrs. Carter filed a Participant Statement, signed by over 50 people, on October 28, 1993. The Postal Service filed its "Comments" on December 2, 1993.

We affirm the Postal Service's decision to consolidate the Waka, Texas, post office. As explained in greater detail below, we find, after considering section 404(b) of the Act and the applicable regulations, that the record shows the Postal Service acted within the statutory guidelines in making its decision.

II. Commission Review

A. Summary of the Postal Service's Determination

The Postal Service has decided to consolidate the Waka post office by substituting a contractor-operated "community post office" under the administration of the Perryton, Texas, post office located 16 miles away. The Postal Service promises that the community post office will provide the same number of hours of service as the current office. Final Determination at 1. The community post office will provide all the retail services now available at Waka, other than permit and meter mailings. There are no permit¹ or meter users at the Waka office.

¹ A number of residents indicated on their questionnaires that they use the Waka post office for permit mailings. E.g., Record Items Nos. 18-10a, 18-19b and 18-22b. However, it appears that they are talking about receiving mailings which have been sent under a permit, a service the community post office will continue. The Postal Service may wish to consider modifying its

The Waka post office is now open 24 hours per week. Fifty customers rent post office boxes. The average number of daily retail transactions is seven. On average, the Waka post office receives 212 pieces of mail daily and dispatches 51. In fiscal 1991, the office had receipts of \$6,038. The annual cost of operating the Waka post office after appointing a new postmaster is estimated to be \$16,577. The annual cost for the community post office is estimated to be \$9,000. Final Determination at 6. The nearest alternative post office, five miles away at Farnsworth, provides 47 hours of window service per week. The Perryton post office, which will administer the contract for the community post office, provides 37½ hours of window service per week. Both Farnsworth and Perryton have post office boxes for rent.

Waka is a small community in northern Texas. Waka has one church. There are three businesses serving the needs of the agriculture industry in Waka and the surrounding area. Waka has a local volunteer fire department. The people in the Waka community rely on the bulletin board in the post office for information of local concern, especially notices of upcoming community activities. See Proposal at 4.

B. Procedural Requirements: 39 U.S.C. § 404(b)

The procedural requirements for providing notice of the Postal Service's intention to consolidate a post office and an opportunity for public comment are found at section 404(b) of the Act as well as section 113.2 of the Domestic Mail Manual.² On March 10, 1992, the Postal Service sent questionnaires to the customers of the Waka post office. The Postal Service received twelve replies. The Postal Service held a community meeting on

questionnaire to clarify that it is asking whether the local customers have permits which they use to make bulk mailings.

² When the Postal Service issued its July 1, 1993, edition of the Domestic Mail Manual, it put this section in what it termed the Transition Book to the Domestic Mail Manual.

March 16, 1992. Nine residents attended the meeting. On June 22, 1992, the Postal Service posted the consolidation Proposal at the Waka and Perryton post offices. Eight comments were received. The Final Determination was posted on November 1, 1993.

The Petitioners have raised no complaints regarding the Postal Service's actions with respect to following the procedure established in its regulations. Having reviewed the Administrative Record before us for consistency with the governing law and regulations, we find no reversible error.

C. Substantive Criteria to be Considered by the Postal Service before Consolidating a Post Office: 39 U.S.C. § 404(b)

When making a decision to consolidate a post office, the Postal Service must follow the procedure which affords patrons the opportunity to present their opinions. Additionally, the Postal Service must consider four specific factors (as well as any others deemed necessary): effect on community, effect on employees, whether a maximum degree of effective and regular postal services will be provided, and economic savings. In our review, we examine the Postal Service's consideration of each statutory criterion and determine whether the Service made the required findings concerning each factor, and whether those findings are supported by substantial evidence in the record and are otherwise in accordance with the requirements of the Act.

1. Specific Issues Raised

a. Replacement Service to be Provided

One of the Petitioners' arguments rests on the assumption that a community post office cannot provide the same services or play the same role in the lives of the Waka residents as the current office. In their Participant Statement, Mr. and Mrs. Carter claim that the post office is the only means of reaching all the people in the community. Ms. Johnson states that walking to the post office and socializing with the other customers there is an important part of the life of the

community. The pastor of the Waka Church of the Brethren says that his church and the District Office of the church would be harmed by any reduction in postal service. Ms. Arnold, Ms. Stinson and Ms. Scroggs all emphasize their satisfaction with the current office, and state their preference that it be left as is. Other Petitioners speak of the businesses' reliance on the post office.

In its Comments, at 4, the Postal Service emphasizes the similarity in the operation of the community post office. It will offer all the postal services now used by the Waka customers. The community post office should also be able to take over the role of the current post office in the overall life of the Waka community. Id. at 8.

The record supports the Postal Service's finding that a community post office should be able to provide both the postal and non-postal services of the present Waka post office. In addition to providing the postal services now used by the residents, the community post office will provide space for the posting of notices as well as function as a gathering point within the community. Final Determination at 5-6.

The record indicates that the residents should experience very little change following the consolidation. The Postal Service has promised that the community post office will have the same number of hours of service as the current facility. Final Determination at 1. The schedule of the carrier serving Waka will not change, and the community will continue to enjoy the same early delivery of mail as at present. (Mail is received at 7:30 am and dispatched at noon.) Record Item No. 11. Additionally, there is a very good chance that the residents will continue to receive their postal services at the same location. The Postal Service has identified the building now leased to house the Waka post office as the only location currently suitable for the community post office. Id. See also Record Item No. 17.

The Petitioners' statements of support for the present arrangement can be seen as a tribute to the quality of service provided in this small community. With the affirmance of its decision, the Postal Service has been given the opportunity to prove that the community post office can provide the quality service the Waka residents are accustomed to.

b. Possibility of Closing the Community Post Office

Ms. Drake is concerned that the consolidation is simply a step toward closing the office at a later date. She compares consistency of providing service using postal employees with uncertainty in replacing contracts as they expire. Mr. Ladd says he does not know of any dependable person interested in obtaining a contract to operate the Waka community post office. He fears that, without the Postal Service's assurance and backing, service will deteriorate.

In its Comments, at 5-6, the Postal Service says that the consolidation will not result in the residents receiving less than the maximum degree of regular and effective postal services required by the statute. The Postal Service emphasizes that the contractor will be held to the same standards as the current Officer-in-Charge. To provide assurance that the contractor will provide the level of service agreed to, a bond is required. With regard to closing the community post office, the Postal Service says the record contains nothing to suggest that possibility. The Postal Service adds that it would not close the office without proper justification, and the approval of the Vice President, Customer Services, would be required. Id. at 7.

We are accepting the Postal Service's findings on this point, after considering the serious issues raised by the Petitioners. We share the Petitioners' concern that the Postal Service might later decide to close the community post office. The Commission has ruled that such a closing does fall within the scope of section 404(b). If the Postal Service should later decide to close the community post office, Waka residents could

appeal that decision to the Commission. However, we have no assurances from the Postal Service that it would accept the Commission's jurisdiction.

In this case, we are not requiring such assurances before affirming the Postal Service's determination. As the Postal Service points out, the record contains no suggestion that the Postal Service has any intention of closing the Waka community post office at some time in the future. The Discontinuance Coordinator has stated in the record that the number of customers in Waka warrant the retention of a community post office. Record Item No. 14. Our record does not indicate that this circumstance might be changing; that is, that the population might be diminishing. To the contrary, both Ms. Johnson and Mr. Gauby point to growth.

We recognize the concern that is raised by the perception of instability in the structure of community post offices. Although it might be easier to substitute one postal employee for another than one contractor for another, the contract does call for notice before cancellation, which allows time to obtain another contract. If a sudden change of circumstance prevents the contractor from continuing to operate the office, there is no indication that the Postal Service cannot provide service with a postal employee until a new contract is signed.

With regard to Mr. Ladd's statement that he does not know any qualified person who wants the contract, we note that at least three residents have expressed interest in it.³ The record does not address the qualifications of these individuals. However, we see no reason to agree with Mr. Ladd that a qualified person cannot be found in Waka. After being trained by the Postal Service, the contractor will remain under the administration and supervision of the postmaster in Perryton. That continuing involvement should provide the assurance and

³ Record Items Nos. 18-5b, 18-12b, 18-14b.

backing from the Postal Service that Mr. Ladd says is necessary to keep service from deteriorating.

c. Economic Savings

In their appeal letter, Mr. and Mrs. Carter assert that the costs for the Waka post office are not high, compared with those for "outrageous things" bought by the Postal Service and government agencies. Ms. Scroggs argues that the consolidation will not save much money, and the Postal Service would do better to cut waste in other areas. The Postal Service states that economic savings were properly included in its decisionmaking. It agrees with Ms. Scroggs it should pursue efforts to reduce costs and increase efficiency, using methods in addition to the change in the operation of the retail facility serving Waka. However, the Postal Service emphasizes that the conversion to a community post office in Waka is an opportunity to save money in the specific situation under consideration. Comments at 9-10.

Having reviewed the record, we find that the Postal Service stayed within the statutory guidelines with regard to the consideration of economic savings from converting the Waka post office into a community post office. The Petitioners are correct that the present arrangement in Waka is not a costly operation. However, the statute permits the Postal Service to assess the amount it can save by consolidating a post office, and to use that factor as a consideration in the decisionmaking. Although the Petitioners may be correct that the Postal Service could economize in other areas, that fact does not detract from its decision to rely on the savings from the conversion as one factor in its decision to serve Waka with a community post office.

2. Effect on Employees and "Other Factors"

The Petitioners have raised no specific issues regarding the Postal Service's findings and conclusions concerning the effect on employees and "other factors" criteria in the statute [section 404(b)(2)(B) and (E)]. Having reviewed the Postal Service's findings and conclusions regarding these matters, we find them

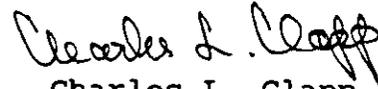
consistent with the statute and with the Postal Service's own regulations. We therefore affirm the Postal Service's treatment of these factors on the basis of the discussion in the record.

III. Conclusion

For the reasons described above, we find that the determination to consolidate the Waka, Texas, post office meets the standards of 39 U.S.C. § 404(b), and it is therefore affirmed.

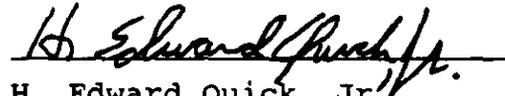
By the Commission.

(SEAL)


Charles L. Clapp
Secretary

CONCURRING OPINION OF COMMISSIONER QUICK

I agree with the concerns expressed by my colleagues in their dissent to this decision. They raise a serious issue which should be addressed, and remedied, by the Postal Service. In my view the Postal Service followed its procedures and considered the factors set forth in 39 U.S.C. § 404(b), as previously interpreted by the Commission, before deciding to consolidate the Waka, Texas, post office. However, I will review subsequent appeals of Postal Service decisions to consolidate post offices and establish a community post office carefully, to assure that the Postal Service either recognizes that § 404(b) applies to community post offices, or that other factors clearly outweigh the impact of losing uncontested rights of appeal.


H. Edward Quick, Jr.
Commissioner

DISSENTING OPINION OF COMMISSIONER SCHLEY,
JOINED IN BY VICE CHAIRMAN LEBLANC

The Commission takes its responsibilities with regard to appeals of Postal Service decisions to close a post office very seriously. Congress intended that we should. The appeal process through the Commission is the only manner in which citizens affected by the closing of a post office can make their views known and protect their post office and mail service. The Commission's role is basically to insure that the U.S. Postal Service has complied with the letter and spirit of the law regarding the closing of post offices. We all recognize that when population shifts, and a post office is no longer needed, prudent management dictates that it should be closed.

In the case of the appeal for Waka, Texas, the case is somewhat less burdensome, both to the residents and the Commission, because the Postal Service intends to replace the current post office with a contract facility, or community post office, rather than eliminating it altogether. Nevertheless, the citizens of Waka have raised legitimate issues which the Postal Service should understand will be taken into consideration in future appeals. One is the financial savings from closing this office are de minimis, and the Postal Service has other

opportunities to save significantly more by prudent management.⁴ No one could seriously challenge that argument.

A second, far more important concern expressed by some residents is that they have no assurances that in the future the Postal Service will not close the contract office. The Commission agrees with this concern, and views it as the fundamental issue in this case. The Commission's long-standing interpretation of the law is that patrons have the right to appeal through the U.S. Postal Rate Commission the closing of a contract office. We are not talking about when a contract might be terminated because of a problem with the contractor, but rather when a contract for a community post office is terminated with no intention to find another contractor. Indeed, legislation was introduced in the 102nd Congress to clarify that portion of the law by requiring the Rate Commission to also consider appeals from the closing of contract offices. A brief history may be in order on this point.

In 1976, Congress amended the Postal Reorganization Act to provide patrons of post offices an avenue of appeal of Postal Service decisions to close or consolidate that office. The appeal procedure, particularly, is a protection to citizens living in the rural areas of our country. Since 1970, when the

⁴ The Postal Service has projected that closing this office would enable it to save \$7,500 per year. Final Determination at 6.

Postal Reorganization Act originally passed, § 101(b) of title 39, United States Code specifically has stated:

The Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining. No small post office shall be closed solely for operating at a deficit, it being the specific intent of the Congress that effective postal services be insured to residents of both urban and rural communities.

In 1976 Congress felt that this section did not provide enough protection to the public after monitoring six years' actions of the Postal Service. The 1976 amendments to the Act added § 404(b) which provided an appeal to the Postal Rate Commission, and established criteria and procedures for the Postal Service to follow. One of the five criteria, listed in subsection (2) (C) is,

whether such closing or consolidation is consistent with the policy of the Government, as stated in section 101(b) of this title, that the Postal Service shall provide a maximum degree of effective and regular postal services

to rural areas, communities, and small towns
where post offices are not self-sustaining;

The Postal Service contends that these procedures and this Government policy do not apply to community post offices, and it applies § 404(b) procedures only to "independent post offices" as defined by the Postal Service. The Postal Rate Commission has consistently interpreted § 404(b) to apply to community post offices when they are the sole source of postal services to a community. See generally Commission Opinion Remanding Determination for Further Consideration, Docket No. A83-30 (Knob Fork, WV) January 18, 1984 at 2-10.

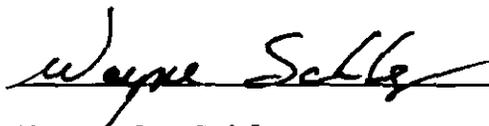
This leaves this Commission with a dilemma. Often the Postal Service proposes to consolidate a small rural post office with another and to replace the small office with a community post office, a retail outlet run by a postal contractor. The Postal Service claims that the citizens will be offered virtually identical services, and suggests that it will carefully consider any subsequent decisions to close that office. The Postal Service argument overlooks the fact that under its limited definition of "post office" the patrons of a community post office no longer have the protection of § 404(b). Those patrons are left with the provisions of the pre-1976 law which Congress found was inadequate to protect citizens from the actions of the Postal Service.

If the Postal Rate Commission's interpretation of § 404(b) were followed by the Postal Service, patrons of community post offices would not lose that statutory protection. Until the Postal Service acknowledges the existence of that protection, the Postal Rate Commission should give heavy weight to the effect of the Postal Service's present interpretation of § 404(b) when it reviews appeals from a consolidation of a rural post office in which a post office is replaced by a community post office.

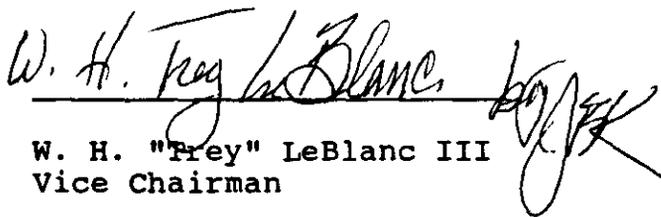
We believe that in this case, the Postal Service has not adequately described the effect of this consolidation and the loss of patrons' rights; further, it has totally failed to address the concerns of the 1976 amendments that the policy of the Government, as stated in § 101(b) is that "the Postal Service shall provide a **maximum** degree of effective and regular postal services to rural areas" [emphasis added] Depriving patrons of their right to appeal the closing of the only facility providing postal services to their community is not providing maximum effective and regular postal services. The Postal Service is using its narrow interpretation to undo the 1976 amendments to the Postal Reorganization Act. These actions of the Postal Service underscore the need for the 1976 amendments to guard the public from Postal Service decisions which ignore the Government policy embodied in § 101(b).

The concept of the U.S. Postal Service being an agent to "bind the nation together" does not lie simply in the ability to deliver mail to all parts of the United States, it also implies the ability of residents to have economical and convenient access to postal services. That implies a convenient post office where business other than just mailing a letter can be carried out.

For these reasons, the determination to consolidate the Waka, Texas, post office should be remanded.



Wayne A. Schley
Commissioner



W. H. "Prey" LeBlanc III
Vice Chairman