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

POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

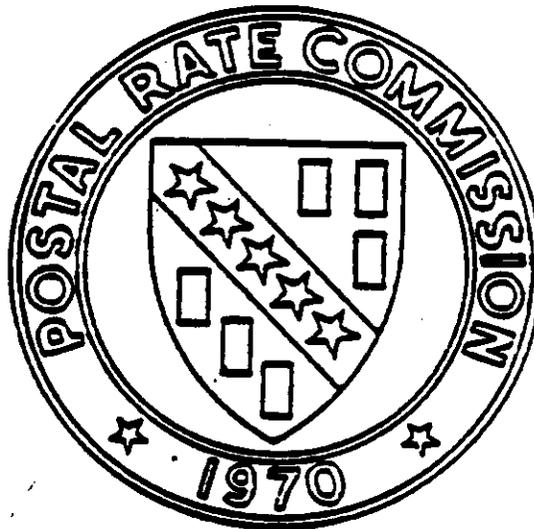
Before

Chairman Gleiman, Vice Chairman LeBlanc
Commissioners Haley, Quick and Schley

In the Matter of:

Inavale, Nebraska 68952 :
(Doris Hunter, et al., Petitioners) :

Docket No. A94-3



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

(March 15, 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)]. We affirm the Postal Service's decision to consolidate the Inavale, Nebraska, post office and replace it with a contractor-operated Community Post Office. As explained in greater detail below, we find, after considering section 404(b) of the Act and the applicable regulations, that the Postal Service acted within the statutory guidelines in making its decision.

Procedural history of appeal. On November 16, 1993, the Commission received an appeal letter from Doris Hunter, opposing the Postal Service's decision to consolidate the Inavale, Nebraska, post office and convert it into a contractor-operated Community Post Office. The Commission established Docket No. A94-3 for review of the Postal Service's record. The Commission has received 34 additional letters concerning the Postal Service's decision, including one from Michaelle Strickland, who enclosed a petition signed by 51 people. These letters have been consolidated into this docket. The Postal Service filed its "Comments" on January 10, 1994.

II. Commission Review

A. Summary of the Postal Service's Determination

The Postal Service has decided to consolidate the Inavale post office and substitute a contractor-operated Community Post Office under the administrative control of the Red Cloud post office, located six miles away. The Postal Service promises that the Community Post Office will provide at least the same number of hours of service as the current office. Final Determination at 1.

At this time, 43 post office boxes at the Inavale office are rented, and two customers use general delivery. Eighty Inavale customers receive delivery along a rural route. The Inavale post office is open 33 hours per week, but the lobby is open for more than 50 hours per week so that customers can get mail from their post office boxes during those periods also. On an average day, the Inavale post office receives 441 pieces of mail and

dispatches 112. The annual cost of operating the Inavale post office after appointing a new postmaster is estimated to be \$24,038. The annual cost for the Community Post Office is estimated to be \$12,000. The nearest alternative post office is at Red Cloud. Eighty post office boxes are available for rent there, and its lobby is open 24 hours a day.

Inavale is a small community in southern Nebraska. Two churches serve the community. Agriculture plays an important part in the economic life of the community. Inavale businesses include Valley Mutual Insurance company, Gayle Shockley Feeds, M & N Grain, Gala Gardens retirement home and Ladman's Nursery.

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.¹ On May 28, 1992, the Postal Service sent questionnaires to the customers of the Inavale post office. The Postal Service received forty-two replies. The Postal Service held a community meeting on June 27, 1992. Twenty-two residents attended the meeting. On September 14, 1992, the Postal Service posted the consolidation proposal and invitation for public comment at the Inavale and Red Cloud post offices. Six comments were received.

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.

¹ 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.

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 a 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. Service to be Substituted

The Petitioners worry about the level of service that a contractor might provide. They fear that the contractor might employ less-than-adequate help and that the sanctity of the mail might not be protected.

In its Comments, the Postal Service points out that it will provide supervision and guidance to the Community Post Office's operator, who will be subject to the same rules and regulations which make up the directives postal employees are obliged to follow. According to the Postal Service, high quality will be insured by the process used to select the contractor. The selection criteria include the prospective contractor's ability and the quality and location of the proposed facility. A bond will be required of the person who receives the contract. The Postal Service cites a letter from the Red Cloud postmaster, stating that his office is able to provide the necessary administrative services for a Community Post Office in Inavale. Comments at 4-5; Record Item No. 25.

The Commission has received an unusually large number of appeal letters from members of the Inavale community. The

petition with 51 signatures also shows strong support for the retention of the present type of service. However, throughout the Postal Service's decisionmaking process, a significant percentage of the Inavale residents participating in that process agreed to the planned consolidation. Of the forty-two households returning questionnaires, fifteen said they favored the change and eighteen said they had no opinion. Of the six comments responding to the posted Proposal, two were favorable. See Final Determination at 1, 4. Even after we take into account Petitioner Michaelle Strickland's statement that quite a few people in the community have changed their minds since the Postal Service held its meeting on June 27, 1992, it appears that a significant number of Inavale residents find no fault with the Postal Service's decision to establish a Community Post Office.

Taking into account the level of concurrence and support the Postal Service has garnered for the consolidation, we find that the Postal Service has fulfilled its statutory obligations in making its decision. Furthermore, the record supports the Postal Service's finding that a Community Post Office should be able to provide the postal services now used by the Inavale community. In its Comments and throughout the decisionmaking, the Postal Service has explained the mechanisms designed to assure that Community Post Offices provide a high level of service to communities in which they are appropriate. In addition, the Postal Service promises that the consolidation will not result in the residents getting their mail later in the day. It also promises that the Community Post Office will provide at least the same number of window hours as the current office.

2. Loss of Rights After Consolidation

Many of the Petitioners object to the consolidation on the grounds that the Postal Service could close the Community Post Office without consulting the affected community or considering their views. "We know that once we are deprived of our present

post office we no longer come under the protection of the Reorganization Act and are at the mercy of the Postal Service."

The Postal Service calls its intentions regarding the Community Post Office "unequivocal." It lists the points in the record in which it identifies its plan to establish a Community Post Office. The Postal Service adds that it would not close the Community Post Office without proper justification and approval of the Senior Vice President, Customer Services and Sales. Comments at 5.

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 believes there are no external restrictions on its authority to close the Inavale Community Post Office at some future date without providing any opportunity for the affected customers to present their views. The statute intends that, when the Postal Service is planning to close the only retail facility serving a community, the people living in that community have the right to participate by offering their views and having them considered as part of a formal decisionmaking process. The affected customers also have the right to appeal to the Postal Rate Commission, asking it to review the Postal Service's decisionmaking for consistency with the statute. 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 it has any intention of closing the Inavale Community Post Office at some time in the future.

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.

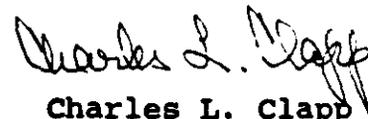
2. Effect on Employees and "Other Factors"

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 [sections 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 Inavale, Nebraska, post office meets the standards of 39 U.S.C. § 404(b), and it is therefore affirmed.

By the Commission.
(S E A L)

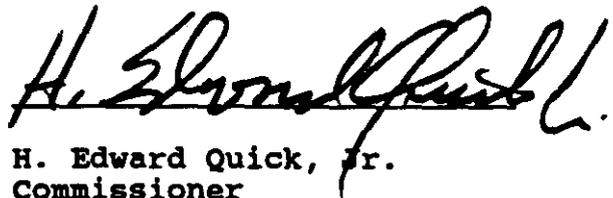

Charles L. Clapp
Secretary

CONCURRING OPINION OF COMMISSIONER QUICK

I reiterate here my concerns originally expressed in the matter of the Waka, Texas, post office. In that case, as in the instant case of Inavale, Nebraska, the Postal Service proposed to replace its existing post office with a contractor-operated "community post office." I believe the Postal Service here as well followed its procedures, and considered the factors set forth in 39 U.S.C. 404(b), before deciding to consolidate the Inavale, Nebraska, post office. However, the Postal Service does not consider these same procedures and statutory factors applicable to community post offices.

The Postal Service has the authority and the ability to remedy this situation and assure that individuals and communities do not lose their uncontested rights of appeal. However, it would be wrong in the current instance to hold the Postal Service to this requirement given that the Inavale, Nebraska, consolidation was already a matter on appeal before the Commission when the decision in Waka, Texas was published.

With the disposition of this case, the Commission no longer has before it an appeal of any post office consolidations. I will review subsequent appeals of Postal Service decisions to consolidate post offices and establish a community post office to determine whether the Postal Service intends to provide individuals and communities with the protection inherent in 404(b) whenever it considers closing a community post office.


H. Edward Quick, Jr.
Commissioner

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

We would remand this matter to the Postal Service for further consideration for the reasons stated in our dissent in Docket A94-1 (Waka, TX). As we stated, 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 Inavale, Nebraska, 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 Inavale 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 not large, and the Postal Service has other opportunities to save significantly more by prudent management. 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 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.



Wayne A. Schley
Commissioner



W. H. "Trey" LeBlanc III
Vice Chairman