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

Before

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

In the Matter of:

Benedict, Minnesota 56436

:

Docket No. A94-8

(Irving E. Morrill, et al.,
Petitioners)

:



COMMISSION OPINION REMANDING DECISION
UNDER 39 U.S.C. § 404(b)
Washington, D.C. 20268-0001
(August 3, 1994)

I. Introduction and Summary

This opinion is issued pursuant to section 404(b) of the Postal Reorganization Act [39 USC sec. 404(b)]. We remand the Postal Service's decision to consolidate the Benedict, Minnesota, post office. It is unclear from the Final Determination whether the residents of Benedict will be served by a Community Post Office (CPO) and the guaranteed extension of a Highway Contract Route (HCR), as proposed throughout the Administrative Record and the comment period. In addition, the Commission again finds, as it did in the Waka, TX case (PRC Op. A94-1), the Inavale, NE case (PRC Op. A94-3), and as far back as the Knob Fork, WV case (PRC Op. A83-30), that the Postal Service has not adequately addressed the concerns of residents worried about subsequent closure of the proposed CPO.

Procedural History of Appeal. On April 5, 1994, the Commission received an appeal letter from Irving E. Morrill, a holder of a Benedict, MN post office box. Mr. Morrill opposed the Postal Service's decision to consolidate the Benedict, MN post office.

The Commission established Docket No. A94-8 for review of the Postal Service's record. On April 11, 1994 the Commission received a letter dated April 7, 1994 from another Benedict resident, Alice Johnson. Ms. Johnson questioned the Postal Service's procedure for the solicitation of bids to operate the proposed CPO. Ms. Johnson's letter has been consolidated into this docket. Mr. Morrill also filed two additional letters, received by the PRC on April 18, 1994 and June 14, 1994, respectively.

Because the Commission's attention in several recent cases has focused on the potential impact on communities of Postal Service decisions to close community post offices established to replace independent post offices eliminated by consolidations, the PRC issued an order May 6, 1994 directing the Postal Service to provide a legal memorandum detailing the Service's

understanding of the extent to which 39 USC 404(b) applies to communities served by CPOs. (PRC Order No. 1014). On May 23, 1994 the Postal Service filed its legal memorandum, in which the Service argued that section 404(b) never applies to community post office closures. On May 31, 1994 the Postal Service filed its general "Comments" regarding the Benedict appeal.

II. Commission Review

A. Summary of the Postal Service's Determination

1. Background

Benedict, MN, an unincorporated rural community with an estimated population of 30, is located in Hubbard County in north central Minnesota, approximately 100 miles south of the Canadian border and about 30 miles southeast of Bemidji, the nearest city. Benedict is administered politically by the county; police protection is provided by the Hubbard County Sheriff's Department, and fire protection is provided by the volunteer fire department of a community five miles away, Laporte. There are no schools or churches in Benedict, although there is a VFW hall. The business community is comprised of an electric shop, a plumbing shop, two convenience stores (one housing the current post office), a towing and salvage operation, a construction company, hardware store, painting company, refrigeration repair service, and a sewing shop. There are also three resorts and a campground in the immediate vicinity.

In March, 1992 the postmaster for Benedict was promoted, and pursuant to Postal Service policy, the vacancy in that position triggered a review of Benedict's service needs. A noncareer clerk was installed as the temporary officer-in-charge. The Postal Service review resulted in an initial decision by the Service to consolidate the Benedict post office and provide service by establishing a CPO and extending Highway Contract Route (HCR) service. Both the administration of the CPO and the emanating office for the HCR would be the Walker, MN Post Office, located seven miles away.

At this time 68 post office boxes are utilized at Benedict; 10 of the box holders also receive mail along a rural route. The post office is open 36 hours a week, and daily retail window transactions average 24. There are, on average, 230 pieces of mail received and 130 dispatched each day. Office receipts in Fiscal Year 1992 were \$13,985. The Postal Service estimates the cost of operating the office with a postmaster runs about \$23,891 annually. The Postal Service estimate for operating the office as a community post office with a contractor is about \$7,500 annually. Establishing a CPO would save the Postal Service an estimated \$16,391 annually, according to the Postal Service.

The Postal Service promises that the CPO will provide both the same number of hours and same retail services now available, other than permit and meter mailings. There are no permit or meter users at the Benedict office at this time. Retail service and additional post office boxes are also available at the Walker Post Office, seven miles away, and the Laporte Post Office, five miles away.

2. Postal Service Procedures

The procedural requirements for providing adequate 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 Transition Book to the Domestic Mail Manual. The Postal Service begins its decisionmaking procedure by sending the affected customers a letter and questionnaire.

On June 3, 1992 the Postal Service sent a letter, questionnaire and enclosures to 69 persons then using post office boxes at the Benedict post office. The letter informed the box holders of a possible change in the way postal service would be provided to the Benedict community. The Postal Service said in its letter that it was considering establishing a community post office and highway contract route carrier service for Benedict. The letter explained that the HCR would "provide pick up and delivery of your mail, as well as the sale of stamps, and all customary postal services, to roadside boxes." One of the

enclosures was titled: "United States Postal Service, Post Office on Wheels, Services Available from Rural and Highway Contract Route Carriers." (Record Item No. 17-3).

Of the 69 box holders contacted, 47 returned their questionnaires. On June 24, 1992, the Postal service held a community meeting attended by 46 persons. Subsequent to the community meeting, in its Community Meeting Analysis (Record Item No. 19-1), the Postal Service again made reference to the fact that it planned to consolidate the Benedict Post Office and extend highway contract route service.

On August 18, 1992, in a letter in response to a petition signed by 64 customers opposed to closing the post office, the Postal Service wrote: "The Postal Service is proposing not only to extend carrier delivery services in Benedict, but also establish a community post office." (Record Item No. 21-1).

An "Invitation for Comments on the Proposal to Consolidate the Benedict, MN Post Office, Establish a Community Post Office, and Extend Highway Contract Route Delivery Service," (Record Item 34-1) and the "Proposal to Consolidate the Benedict MN Post Office, Establish a Community Post Office and Extend HCR Delivery Service," (Record Item No. 34-2) were both posted on October 16, 1992. In the proposal the Postal Service writes: "In addition, customers will have, at their option, an opportunity to receive carrier delivery via highway contract route (HCR) emanating from the Walker Post Office."

Ten comments were submitted in response to the Proposal. In an October 30, 1992 letter to Mr. Irving Morrill, the Postal Service discusses and clarifies the right of Benedict customers to highway contract route delivery.

On December 23, 1992, attached to its Certification of the Record, the Postal Service Log of Discontinuance Actions states under "Proposal," "Consolidate, establish a CPO and extend HCR delivery." Under "Alternate Service Being Proposed," the log says: "CPO and HCR delivery and retain service." (Record Item No. 39 at 1,2).

Nearly 14 months after its Certification of the Record, the Postal Service on February 18, 1994, issued its Final Determination. It titled its Final Determination, "Final Determination to Consolidate the Benedict, MN Post Office and Establish a Community Post Office." Deleted were the words previously used in all documents, "...and Extend Highway Contract Route Delivery Service." The only reference to extended HCR service appears on page 4 of the Final Determination, where the Postal Service writes: "Although customers will have the availability to HCR delivery, the Postal Service wants to establish a community post office...", and "...if a customer petitioned for HCR delivery, he could contact the Walker Postmaster to determine the proper mailbox location....".

In addition, a December 22, 1993 "Fact Sheet" prepared prior to issuance of the Final Determination, only lists under Item 15, "Permanent Alternate Service Proposed: Community Post Office." There is no reference to extending HCR service.

In "United States Postal Service Comments Regarding Appeal," filed with the Commission on May 31, 1994, however, it appears that HCR service for Benedict may be contemplated. The Postal Service writes: "Upon consolidation, service will be provided by a community post office...in addition to extensions of the existing rural carrier delivery routes emanating from the Walker and Laporte Post Office." In the next paragraph, the Postal Service reiterates "...the availability of rural delivery service...". (Comments at 3). On page 8 of "Comments," the Postal Service notes that "...replacement costs include funds: 1) to operate the CPO; and 2) to provide additional HCR service."

3. Rate Commission Conclusion

Since a Final Determination is the operative document in post office closings, the Rate Commission finds that the failure of the Final Determination to list extension of HCR service to the Benedict, MN community in its title, plus its reference to

extended HCR delivery only in passing, leaves a confused record that must be clarified. The Fact Sheet of December 22, 1993 and its lack of reference to HCR service adds to the confusion.

It is not clear that the stated "availability" of HCR (Final Determination at 4) is the same as an automatic extension of HCR service, which from all other documents seemed "available" in Benedict at the customers' discretion. Further, the word "petition" (Final Determination at 4) when used in section 156.2 Delivery Routes, of the Domestic Mail Manual, triggers a process not discussed during the Benedict comment period. It may be that Benedict residents desiring HCR service, even if they petition, may fail the standards for HCR service set forth in 156.21 and therefore not qualify for rural delivery.

If this is the case, the Benedict residents should have been so informed during the comment period and been given an opportunity to comment on the HCR service actually to be provided. If it is not the case, the Postal Service must clarify its Final Determination so that Benedict residents know the guaranteed extension of HCR is what it appeared to be in all offers, letters, and proposals made prior to the Final Determination and subsequent to the Final Determination in Comments Regarding Appeal. The Commission must rely on the Final Determination as the statement of the Postal Service position.

III. Closing of Community Post Offices

Among the concerns expressed by Benedict residents was that the community post office established by the Postal Service would be closed at a later date. Mr. Morrill wondered if the CPO itself would ever be established (Record Item No. 35-26), Darcy Johnson stated that a CPO is a step toward total elimination of retail service (Record Item No. 35-13), and Nancy Cravens predicted that if no contractor could be found at the rate the Postal Service was willing to pay, the CPO "is the beginning of the end" (Record Item No. 35-1).

Throughout the decision process the Postal Service assured residents that the CPO would be maintained. Local interest had

been expressed in bidding on the CPO contract (Record Item No. 35-2). In addition, the Postal Service emphasized that any proposal to close a CPO must be fully justified, documented and approved by the Senior Assistant Postmaster General, Operations Support Group, at Headquarters in Washington, DC. The Postal Service also added that closures of CPOs are not done arbitrarily, but only if the CPO is not used or the area population diminishes almost completely. (Record Item No. 35-24, 27; Final Determination at 3).

The closure of CPOs and residents' interests and rights when a CPO is closed have been an area of concern at the Rate Commission since the Knob Fork, WV appeal in 1983 (PRC Op. A83-30). The Rate Commission believes that the appeal rights provided by section 404(b) of the Reorganization Act extend to closures of community post offices. Where residents express concern about the future of the proposed CPO, the Rate Commission feels that residents should be informed that they could appeal a CPO closure to the Commission, just as they may appeal the closure of independent post offices.

This issue has been addressed clearly in the last two consolidation cases, Waka, TX (PRC Op. A94-1) and Inavale, NE (PRC Op. A94-3). See particularly the dissenting opinions of Commissioners LeBlanc and Schley and the concurring opinions of Commissioner Quick.

The Postal Service Legal Memorandum requested by the Rate Commission on May 6, 1994 and filed with Commission by the Postal Service on May 23, 1994, continues to assert that 404(b) applies only to the closing and consolidation of independent post offices. The Postal Service interprets Congressional intent narrowly and defines "post office" to mean a "facility under the direction of a postmaster, and not the closing or consolidation of a station, branch, contract unit, or other subordinate facility under the administrative supervision of a post office." (Legal Memorandum at 2).

If the Rate Commission were to accept the Postal Service's consistent position that the service of a CPO is equivalent to

that of the independent post offices it seeks to consolidate, the more reasonable reading of section 404(b) and Congressional intent is that 404(b) applies whenever there is a proposed closure or consolidation of a community's retail postal facility, including a CPO. The public generally describes these facilities as "post offices."

The Postal Service's Legal Memorandum also justifies its refusal to extend 404(b) appeal rights to CPO closures on contractual and administrative grounds. The Commission finds these grounds unpersuasive.

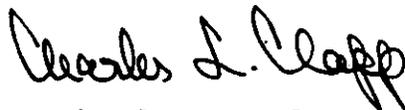
Application of section 404(b) to a CPO does not mean the Postal Service could never close a CPO. It simply means that affected residents would be given notice and an opportunity to present their views prior to a final decision. The Postal Service's Legal Memorandum filed in this case indicates the Service would not solicit citizen comments, nor evaluate the 404(b) factors, when deciding whether to maintain CPO service at Benedict, MN. The Commission finds this ignores the clear purpose of the 404(b) legislation.

IV. Conclusion

The Postal Service record in the Benedict case contains no suggestion that the Postal Service has any intention of closing the Benedict CPO at some time in the future. The record is unclear, however, about what service Benedict residents are actually getting. The Final Determination regarding the extended Highway Contract Route service must be clarified. Therefore, the consolidation of the Benedict, MN post office is returned to the Postal Service.

By the Commission.

(SEAL)



Charles L. Clapp

Secretary