

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Robert G. Taub, Vice Chairman;
Mark Acton;
Tony Hammond; and
Nanci E. Langley

Bronx General Post Office
Bronx, New York

Docket No. A2013-6

ORDER GRANTING MOTION TO DISMISS

(Issued August 8, 2013)

On July 18, 2013, the Postal Service filed a motion to dismiss the proceeding concerning the Bronx General post office (Bronx GPO).¹ The Public Representative filed an answer in support of the Motion.² Petitioners Colón, Pabón and Eilenfeldt filed an answer in opposition to the Motion.³ The appeal of the Postal Service decision concerning the Bronx GPO is premature. The motion to dismiss is granted and the appeals are dismissed without prejudice.

¹ Motion of United States Postal Service to Dismiss Proceedings, July 18, 2013 (Motion).

² Public Representative Response in Support of United States Postal Service Motion to Dismiss Proceedings, July 24, 2013 (PR Answer).

³ Reply to the United States Postal Service Motion to Dismiss, July 29, 2013 (Petitioners Answer).

Background information. On June 3, 2013, the Postal Service issued a final decision letter stating its intent to relocate the Bronx GPO. Motion at 2. The Postal Service has not indicated when the relocation will occur or identified the new location. *Id.*

The Postal Service states that in coming to its decision, it met with local Bronx officials, convened a public meeting, and provided an opportunity for public comment. *Id.* The Postal Service has assured customers that the Bronx GPO will continue to provide service “until the replacement facility is ready for use as a Post Office.” *Id.* at 3. It also stated that it will only consider a replacement facility convenient and suitable to customers, and that the new location will provide the same services and have the same hours of operation as the Bronx GPO. *Id.*

The Postal Service acknowledges that the Bronx GPO is listed in the National Register of Historic Places. *Id.* at 2. The Postal Service states that it voluntarily complies with sections 106 and 111 of the National Historic Preservation Act and will “to the extent practicable, consider alternatives for the property, . . . , if doing so will insure the preservation of the historic property.” *Id.*, Exhibit 1 at 2.

Postal Service Motion. The Postal Service contends the Commission lacks jurisdiction to consider an appeal of a post office relocation under 39 U.S.C. § 404(d). *Id.* at 4. It asserts that an appeal under 39 U.S.C. § 404(d) must concern a discontinuance action. *Id.* It further asserts that the Commission has consistently held 39 U.S.C. § 404(d) does not apply to a relocation of retail operations to another facility within the same community. *Id.* Therefore, the Postal Service concludes that the Commission lacks jurisdiction to hear an appeal concerning the relocation of the Bronx GPO.

Public Representative Answer. The Public Representative asserts that Commission has jurisdiction to hear appeals under 39 U.S.C. § 404(d) only where the Postal Service closes or consolidates a post office. PR Answer at 3. As the Postal Service actions to date cannot be interpreted to close or consolidate the Bronx GPO,

the Public Representative contends the Commission does not have authority to consider the merits of the appeal. *Id.*

The Public Representative recognizes that the Postal Service has not identified a new location for the post office. *Id.* at 5. He asserts that it is important that the Bronx GPO remain open until the new location is able to open. *Id.* Otherwise, based on the facts at that time, the discontinuance of retail operations at the Bronx GPO may be grounds for appeal of a post office closing. *Id.*

Petitioners' Answer. Petitioners contend that the Postal Service's actions are not consistent with its own regulations. Petitioners Answer at 2. Petitioners argue that Postal Service regulations on relocations "explicitly state that when a facility action subject to 241.4 also involves a historic property covered by the National Historic Preservation Act (NHPA) or closing a post office, that facility action shall be governed by the discontinuance statutes, i.e., 404(d) and 241.3, which give individuals the right to appeal to the Commission." *Id.*, see 39 C.F.R. § 241.4. Petitioners read section 241.4(d), in connection with Postal Service actions concerning the Bronx GPO, as requiring the Postal Service to follow the discontinuance procedures of 39 U.S.C. § 404(d). *Id.* at 4-10.

Petitioners also distinguish cases relied on by the Postal Service in its Motion and request that the Postal Service be required to produce an administrative record regarding its Bronx GPO actions. *Id.* at 18-35.⁴

Commission analysis. The Postal Service actions concerning the Bronx GPO are insufficient to trigger the right to appeal at this time. The Postal Service has announced its plans to relocate the Bronx GPO. It also has affirmatively stated that it will continue providing retail service at the Bronx GPO "until a suitable location within

⁴ The Postal Service requested leave to respond to Petitioners Answer, contemporaneously filing its surreply comments. See Motion of United States Postal Service to Surreply, August 5, 2013 (Motion); and Surreply of the United States Postal Service to Dr. Hutkins' Reply, August 5, 2013 (Surreply). The motion to surreply is granted. The Surreply offers a different interpretation of section 241.4(d) than proffered by Petitioners. Neither is germane to the Commission's conclusion on the issues before it. On August 7, 2013, Petitioners filed a Response to the United States Postal Service's Surreply. That response was unaccompanied by a motion for leave to reply.

the same community is found and is ready for occupancy and use as a Post Office.” Motion at 7. It has not set a date to discontinue service at this location. It has not identified a site for relocation. There is no indication that the Postal Service has undertaken a discontinuance study pursuant to 39 C.F.R. § 241.3. It has proceeded under its 39 C.F.R. § 241.4 relocation regulations.

Future events could make cessation of retail operations at the Bronx GPO ripe for Commission review. Without information on when the Bronx GPO will close, and where and when the replacement facility will begin operations as a post office, any appeal is premature. Such information would be relevant in determining whether the Postal Service’s actions represent a relocation or closing. If the former, based on Commission precedent, section 404(d) would be inapplicable.

Petitioners argue that the Postal Service has not followed its own regulation on relocations. Specifically, Petitioners contend that, because the Postal Service’s actions concerning the Bronx GPO implicate the NHPA, 39 C.F.R. § 241.4(d) requires the Postal Service to follow the discontinuance procedures of 39 U.S.C. § 404(d).

Congress, through 39 U.S.C. § 404(d), has conferred appellate jurisdiction on the Commission only under limited circumstances. As noted by all persons in this docket, the Commission has not found that these limited circumstances extend to legitimate post office relocations. See Motion at 4-7; Petitioners Answer at 20-24; PR Answer at 3-4. The Commission’s limited statutory jurisdiction cannot be extended to relocations by Postal Service regulations.

The Postal Service's June 3, 2013 final decision letter concludes that the Postal Service has adhered to all applicable regulations. See Motion, Exhibit 1 at 2-3, 5. However, even assuming that were not the case, a section 404(d) appeal is not an appropriate way to try to enforce this specific Postal Service regulation.⁵

It is ordered:

1. The Motion of United States Postal Service to Dismiss Proceedings, filed on July 18, 2013, is granted.
2. Petitioners' appeals are dismissed without prejudice.

By the Commission.

Shoshana M. Grove
Secretary

⁵ With respect to claims that may relate to NHPA, the Commission has previously observed "[t]he Commission's role in appeals under section 404(d)(5) does not include responsibility for enforcing the NHPA." Docket No. A2011-49, Order No. 1037, Order Affirming Determination, December 12, 2011, at 12; see also Docket No. A2013-1, Order No. 1588, Order Granting Motion to Dismiss Without Prejudice, December 19, 2012, at 5 n.9.