

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Stamford Post Office
Stamford, Connecticut

Docket No. A2014-1

**RESPONSE OF THE PUBLIC REPRESENTATIVE
IN OPPOSITION TO UNITED STATES POSTAL SERVICE
MOTION TO DISMISS PROCEEDING**
(November 8, 2013)

On October 28, 2013, the United States Postal Service (Postal Service) filed a motion pursuant to rule 21 of the Commission's rules of practice, 39 CFR 3001.21, seeking dismissal of the instant proceeding.¹ For the reasons set forth below, the Public Representative submits that the Commission should deny the Postal Service's Motion to Dismiss.

THE POSTAL SERVICE'S MOTION TO DISMISS

The Motion to Dismiss is grounded on the Postal Service's assertion that it has not initiated a discontinuance study or issued any final determination to close the Stamford Post Office, located at 421 Atlantic Street, Stamford, Connecticut. Motion at 1. To support this, the Postal Service submits a letter (Customer Letter), dated October 18, 2013, informing customers that the operation of the Stamford Post Office was suspended as of close of business on September 20, 2013. The Postal Service also asserts, in the alternative, that because the Stamford Post Office is a postal station, the Commission lacks the subject-matter jurisdiction over its closing. *Id.*

¹ United States Postal Service Motion to Dismiss Proceeding, October 28, 2013 (Motion to Dismiss).

ARGUMENT

The Petition for Appeal² seeks Commission review of a post office closing under 39 U.S.C. 404(d)(5).³ The Postal Service argues that the petitioner's claim is not ripe, since the operation of the Stamford Post Office has been "suspended," not "discontinued." *Id.* The record before the Commission does not support the Postal Service's notion that its action constitutes a "suspension" as opposed to a *de facto* "discontinuance." For this reason, the Motion to Dismiss should be denied and the docket remanded for failure to comply with the requirements of 39 U.S.C. 404(d)..

To the customers of the Stamford Post Office, the distinction between an indefinite suspension and a permanent discontinuance is academic. In both cases, access to the post office has ended, and in both cases there is no assurance that access will ever be reestablished. A true suspension requires that circumstances be in limbo; a service has temporarily ceased and will recommence at a later time. However, in the instant case, the Postal Service has made it unequivocally clear it has no intention of resuming the Stamford Post Office.

Legally, it is more beneficial for the Postal Service to characterize its action with regards to the Stamford Post Office as a suspension rather than a closure. From a legal standpoint, the distinction between a "suspension" and a "discontinuance" has both an immediate and a substantial significance. A "suspension" denies customers: any rights under 39 U.S.C. 404(d)(1) to comment on the closing; a written decision under 39 U.S.C. 404(d)(3) that addresses the factors enumerated in 39 U.S.C.

² Petition for Review Received from Kaysay Abrha Regarding Downtown Stamford, CT Post Office 06901, and Application for Suspension of Determination, October 17, 2013 (Petition).

³ The Petitioner suggests holding the Postal Service "suspension" in abeyance. The Public Representative supports this option only if the Commission is uncertain whether the Postal Service's action constitutes a *de facto* discontinuance. If the Commission needs further evidence on the matter, it should require the Postal Service to provide: an explanation of steps taken by the Postal Service to establish a rent-back lease for the post office facility and the reason(s) why such a lease was not obtained; what alternative post office sites or facilities were considered when it was clear that the facility was to be sold and why those alternatives were unavailable or rejected; the current status of the plans to find another post office site, including the status of the discussions regarding the building of another post office.

404(d)(2); a right to appeal to the Commission under 39 U.S.C. 404(d)(5); and continued service under 39 U.S.C. 404(d)(4) during the 60 days following the Postal Service's written determination. By contrast, a "discontinuance" affords all of those rights to customers. Although the Postal Service has the right to close post offices, it must do so in compliance with the procedures in section 404(d) and subject to the Commission's oversight. The Commission, for its part, has an obligation to ensure that alleged "suspensions" are, in fact, *bona fide* suspensions and not *de facto* closings. The Postal Service's actions regarding the Stamford Post Office are a *de facto* closing. This is evident by reading its initial Customer Letter and the Postal Service's own statement of events.

The Postal Service uses the September 4, 2013, inspection's finding of severe deterioration to justify its "emergency suspension" of Atlantic Street. *Id.* at 3, 8. It claims the severe property deterioration caused "local Postal Service officials [to] coordinate[] to move operations from" the Stamford Post Office. *Id.* at 8. However, this justification is flawed. The Postal Service "executed an Agreement of Purchase and Sale of the property" in December of 2012. Motion at 2f. The Postal Service knew, as of December 2012, it would need to either vacate or lease back space at 421 Atlantic Street once the sale was finalized in September 2013. This gave the Postal Service nine months to arrange and negotiate an alternative site or lease-back agreement.⁴ However, the Postal Service provides no evidence of negotiations or attempts identify alternative sites. Given the facts as presented, the Public Representative is not swayed by the Postal Service's characterization of the situation as an emergency. The Postal Service knew it needed to find a facility by September 2013, regardless of the inspection. While the inspection's findings may have hastened the move, it did so by only by a few days.

⁴ The Public Representative is doubtful the September 2013 inspection was the first one conducted about or after December 2012. It is difficult to believe that the United States Postal Service and a Cappelli Enterprises would have entered into a sale and purchase agreement without first conducting an initial inspection of the property, merchandise, in question.

More evidence that the closure of the Stamford Post Office is a *de facto* “discontinuance” is the Postal Service’s failure to timely and accurately notify customers and failure to refer to its own action as a suspension prior to the existence of this appellate docket. The Postal Service’s initial Customer Letter dated September 18, 2013, (which the Postal Service neglected to include in its filing with the Commission), tells customers the Postal Service will vacate the Atlantic Street location on September 20, 2013. The Customer Letter does not offer a reason for the closure, does not refer to the findings of the inspection, and does not mention a “suspension.” Rather, the Customer Letter clearly states that services will not resume at the Stamford Post Office and that a permanent alternative site has not been found:

“At this time, we have not yet found a permanent new location. But we will continue to explore all of our alternatives to find a new permanent location to provide you with full postal services within the immediate area.”⁵

Participant Statement, Exhibit A.

The Postal Service claims it followed its own procedures governing suspensions, specified in Section 61 of the Postal Service Handbook PO -101. Motion at 4. This is not so. Section 61 requires the Postal Service “to notify affected customers immediately by individual letter” that includes, among other things, informing customers of the effective date and reason for the suspension.⁶ Handbook PO-101 at 40. It requires, whenever possible, for postal officials to initiate the discontinuance process sufficiently in advance of the circumstance prompting the emergency suspension to allow a meaningful opportunity for public input to be taken into account before services are suspended. *Id.* at 41. The Postal Service failed to do all these things with regards to the Stamford Post Office. The Customer Letter did not immediately notify customers, as it was posted nine months after the sale date was determined and only two days prior to the closing. It failed to explain its action as a suspension, failed to give a reason for vacating the facility and discontinuing services, and most egregiously, failed to give Stamford Post Office customers any meaningful opportunity to provide input before the

⁵ Comments Received from the National Post Office Collaborate, October 23, 2013 (Participant Statement).

⁶ Postal Service-Operated Retail Facilities Discontinuance Guide, Handbook PO-101, July 2011 (Handbook PO-101).

September 20, 2013 closing date. Conspicuously, after the October 17, 2013, filing of the Petition for Appeal, the Postal Service issued a revised Customer Letter, dated October 18, 2013. Motion Exhibit 1. The revision states the Stamford Post Office services are suspended, effective September 20, 2013, due to “severe deterioration of the facility.” Motion at Exhibit 1. The Public Representative is disturbed by this letter. Not only was it written and posted almost a month after services were discontinued, but the Postal Service appears to be backtracking in an attempt to satisfy its own regulations. A Customer Letter notification is only valid if it is correct at the time of issuance. To rewrite and substantively alter it, retroactively, by incorporating key language and explanations that should have been included at the initial time of issuance, is disingenuous and ineffective.

The Public Representative concludes that actions of the Postal Service with regard to the Stamford Post Office do not constitute a suspension but a discontinuance, subject to 39 U.S.C. 404(d). The facts presented permit the Commission to reach a reasoned decision that the Postal Service determined that the Stamford Post Office would permanently close on September 20, 2013, ostensibly as far back as December 2012. First, the fact that the Postal Service provided no evidence that it actively and timely attempted to find an alternative property for postal services after the December 2012 sale agreement, implies a *de facto* decision to close the Stamford Post Office and not an emergency suspension dictated by circumstances beyond its control. Second, the lack of any documents supporting the Postal Service’s argument, such as a comprehensive statement of what the Postal Service has done, is currently doing, or has concrete plans to do in order to find an alternative facility or site for a replacement post office, further supports the assertion the decision to close the Stamford Post Office was a determination to close, not suspend. Third, the Postal Service’s substantive changes to the initial Customer Letter after the appellate filing, together with its blatant omission of the initial Customer Letter from its filings in this docket, imply a desire on the part of the Postal Service to re-frame its actions. Fourth, to support the declaration that operation of the Stamford Post Office has been placed on “emergency suspension,” the Postal Service points to the fact that it has not conducted a formal discontinuance

study or final determination and does not have an administrative record available for filing as required by 39 CFR 241.3 and 30 C.F.R. 3025.30, respectively. Motion at 7. While the absence of an administrative record is consistent with the Postal Service's claim that it has not yet determined to close the Stamford Post Office, it may also be interpreted as evidence that the requirements of 39 U.S.C. 404(d) have been violated. For the aforementioned reasons, the Public Representative requests that the Postal Service's Motion to Dismiss be denied, and it be required to conduct a proper discontinuance process, pursuant to 39 U.S.C. 404.

Lastly, the Commission has repeatedly rejected the Postal Service's assertions that stations and branches are not "post offices" under section 405(d)(5).⁷ 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.

CONCLUSION

For the reasons set forth above, the Public Representative submits that action on the Postal Service's Motion to Dismiss should be denied.

Respectfully Submitted,

/s/ Tracy N. Ferguson
Tracy N. Ferguson
Public Representative

901 New York Avenue, N.W.
Washington, D.C. 20268-0001
(202) 789-6844; Fax (202) 789-6891
Tracy.Ferguson@prc.gov

⁷ 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.