

Before the  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Bellville Post Office  
Bellville, GA

Docket No. A2020-1

PUBLIC REPRESENTATIVE COMMENTS

(August 20, 2020)

On July 31, 2020, the City of Bellville, Georgia (Petitioner) appealed the Postal Service's determination to close the Bellville post office located in Bellville, Georgia 30414.<sup>1</sup> Order No. 5612 established this docket to consider the Petition, set forth a procedural schedule, and designated the undersigned Public Representative.<sup>2</sup> On August 10, 2020, the Postal Service filed a motion to dismiss the proceedings.<sup>3</sup> The Public Representative submits this response to support the Motion to Dismiss.

I. PETITION AND MOTION TO DISMISS

Petitioner asserts that "the Postal Service has failed to adhere to the applicable laws and regulations governing the discontinuance of post offices, in particular the requirements of 39 C.F.R. § 241.3." Petition at 1. Petitioner provides examples of how it believes the Postal Service failed to meet the requirements of section 214.3. *Id.* at 1-3.

In its Motion to Dismiss, the Postal Service makes three main arguments. First, it asserts that the Commission lacks jurisdiction to consider the appeal because the Bellville post office is a village post office (VPO). Motion to Dismiss at 1-2. It states that "Petitioner's appeal does not fall within the scope of the Commission's jurisdiction under 39 U.S.C. § 404(d)(5) because the appeal requests the Commission to review a contract administration

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<sup>1</sup> Petition for Review Received from the City of Bellville, GA Regarding the Bellville, GA Post Office, July 31, 2020 (Petition).

<sup>2</sup> Notice and Order Accepting Appeal and Establishing Procedural Schedule, August 3, 2020 (Order No. 5612).

<sup>3</sup> United States Postal Service Motion to Dismiss the Proceedings, August 10, 2020 (Motion to Dismiss).

decision concerning the operation of a contractor-operated retail facility (*i.e.*, a VPO).” *Id.* at 4. It contends that the definition of “post office” under 39 U.S.C. § 404(d)(5) does not include contractor-operated facilities such as VPOs. *Id.* at 5-6. Thus, the Postal Service concludes that the Bellville VPO closing was not subject to the requirements of 39 C.F.R. § 241.3 because they apply to the discontinuance of “post offices,” which do not include VPOs. *Id.* at 6-7.

Second, the Postal Service asserts that the Commission lacks jurisdiction because the Bellville VPO is not the “sole source” of retail services for the Bellville community. *Id.* at 7-8. It notes that the Commission has used the “sole source” test to determine whether it has jurisdiction to hear appeals of Postal Service decisions to close or consolidate contractor-operated offices such as Contract Postal Units (CPUs) and Community Post Offices (CPOs). *Id.* at 7. It contends that the Commission may similarly apply the “sole source” test to VPOs because they are also non-Postal Service-operated contract offices. *Id.* It cites to previous post office closing appeal cases to support its conclusion that the Bellville VPO is not the “sole source” of postal services to the Bellville community and thus is not subject to Commission’s jurisdiction under 39 U.S.C. § 404(d). *Id.* at 7-11.

Third, the Postal Service describes policy reasons that support its position that the Commission’s jurisdiction over post office closings does not apply to contracts with a third party VPO operator. *Id.* at 11. It asserts that the procedures required by section 404(d) are not compatible with the requirements of contract management, negotiation, and implementation and notes that its ability to negotiate reasonable contractual terms to operate a contract unit would be impaired if parties could appeal contractual decisions. *Id.* at 11-12.

## II. DISCUSSION

Postal regulations governing post office discontinuances do not apply to VPOs. Also, the Bellville VPO is not the “sole source” of retail services for the Bellville community. Thus, the Commission lacks jurisdiction to hear the appeal of the Bellville VPO closing. For this reason, the Public Representative recommends that the Commission grant the Motion to Dismiss.

A. POSTAL DISCONTINUANCE REGULATIONS DO NOT APPLY TO VPOs

Postal Service regulations governing post office discontinuances are codified in 39 C.F.R. § 241.3 and apply to USPS-operated retail facilities. These regulations distinguish between a “USPS-operated retail facility” and “contractor-operated retail facility.” USPS-operated retail facility “includes any Postal Service employee-operated Post Office, station, or branch, but does not include any station, branch, community Post Office, or other retail facility operated by a contractor.” 39 C.F.R. § 241.3(a)(2)(i). Conversely, “contractor-operated retail facility” includes any station, branch, community Post Office, or other facility, including a private business, offering retail postal services that is operated by a contractor, and does not include any USPS-operated retail facility.” *Id.* § 241.3(a)(2)(ii). VPOs are contractor-operated retail facilities under section 241.3(a)(2)(ii). They are operated by third parties and located within existing communities inside established businesses and other places consumers already frequent.<sup>4</sup> The Bellville VPO contracts with the Postal Service to sell Forever Stamps and offer post office boxes to customers. Motion to Dismiss at 3.

Petitioner asserts that “the Postal Service has failed to adhere to the applicable laws and regulations governing the discontinuance of post offices, in particular the requirements of 39 C.F.R. § 241.3.” Petition at 1. However, Section 241.3 applies to discontinuances of USPS-operated retail facilities, which do not include contractor-operated retail facilities such as the Bellville VPO. See 39 C.F.R. §§ 241.3(a)(1)(i), (a)(3). Because contractor-operated retail facilities are not subject to the requirements of section 241.3, the Postal Service was not required to follow them when closing the Bellville VPO.

B. THE BELLVILLE VPO IS NOT THE “SOLE SOURCE” OF RETAIL SERVICES

The Commission lacks jurisdiction to hear the appeal of the Bellville VPO closing because the Bellville VPO cannot be considered the “sole source” of postal services for Bellville residents. The Commission has consistently used the “sole source” test to determine its jurisdiction to hear appeals of Postal Service decisions to close or consolidate contractor-operated retail facilities. In *Rio Nido*, the Commission stated, “[t]he ‘sole source’

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<sup>4</sup> Fact Sheet Village Post Offices, December 12, 2012, <https://about.usps.com/news/electronic-press-kits/expandedaccess/assets/pdf/Fact-sheet-12-12-12.pdf> (visited August 19, 2020) (VPO Fact Sheet).

test that the Commission has consistently used to determine its jurisdiction to hear an appeal of a Postal Service decision to close or consolidate a CPO is unique to non-Postal Service-operated contract offices like a [CPU] or CPO.”<sup>5</sup> Commission precedent “has established that the Postal Service’s decision to close or consolidate a [CPU or CPO] is only within the Commission’s jurisdiction if the [CPU or CPO] is the sole source of postal services to the affected community.”<sup>6</sup> The “sole source” test may be applied to VPOs because they are contractor-operated retail facilities similar to CPUs and CPOs.<sup>7</sup>

In recent post office closing appeals, the Commission found it lacked jurisdiction to hear the appeals of three CPU and CPO closings because they were not the “sole source” of postal services in their communities. In *Rio Nido*, the Commission weighted several factors, such as the Postal Service moving the post office boxes to the Guerneville post office located 2.1 miles away from the Rio Nido CPU. Order No. 4088 at 10. It also considered access to postal services on [www.usps.com](http://www.usps.com), alternative stamp purchasing options such as grocery stores, and the availability of carrier service. *Id.* at 10-11. After weighing these factors, the Commission stated it “is unable to conclude that the Rio Nido CPO is the sole source of postal services to the Rio Nido community” and that it lacks jurisdiction to hear the appeal of the Rio Nido CPO closing. *Id.* at 11-12.

Similarly, in *Careywood* the Commission did not find the Careywood CPU to be the “sole source” of postal services to the community. Order No. 2505 at 13. The Commission considered several factors such as the provision of rural carrier delivery; the availability of retail postal services, including replacement post office boxes, at a nearby post office located approximately 7 miles away; and services available on [www.usps.com](http://www.usps.com). *Id.* at 11-12.

In *Alplaus*, the Commission concluded that the Alplaus CPO could not be considered the “sole source” of postal services for *Alplaus* residents considering the availability of a

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<sup>5</sup> Docket No. A2017-2, Order Affirming Determination, September 1, 2017, at 8 (Order No. 4088).

<sup>6</sup> *Id.*; Docket No. A2015-2, Order Dismissing Appeal, May 27, 2015, at 9 (Order No. 2505).

<sup>7</sup> VPOs are part of the Postal Service’s “Approved Postal Provider” network, which are “retail outlets for postal products and services that include [CPUs] ... and [CPOs].” See VPO Fact Sheet. Approved Postal Providers are operated by third parties. *Id.*

nearby post office approximately 1 mile away, access through [www.usps.com](http://www.usps.com), and more than 20 other alternate access options located within 5 miles of the Alplaus CPO.<sup>8</sup>

Similar to *Rio Nido*, *Careywood*, and *Alplaus*, the Bellville VPO post office boxes will be relocated to the nearby Hagan post office 2.1 miles away with no disruption in service.<sup>9</sup> The Postal Service states that all customers currently receiving Post Office Box service at the Bellville VPO will be eligible to receive rural carrier service, and several Bellville VPO customers already receive street delivery service. Motion to Dismiss at 3, 11. Customers will also have access to postal services provided by [www.usps.com](http://www.usps.com), as well as alternative stamp purchasing options offered by area retail businesses. *Id.* at 11.

Based on these factors, the Bellville VPO cannot be considered the “sole source” of postal services for Bellville residents. For this reason, the Commission lacks jurisdiction to hear the appeal of the Bellville VPO closing.

### III. CONCLUSION

For the reasons describe above, the Commission should grant the Postal Service’s Motion to Dismiss for lack of jurisdiction.

Respectfully submitted,

Katrina R. Martinez  
Public Representative

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<sup>8</sup> Docket No A2012-88, Order Dismissing Appeal, March 21, 2012, at 6 (Order No. 1293).

<sup>9</sup> Petition, Exhibit A; Motion to Dismiss at 10-11.