

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

Before Commissioners:

Michael Kubayanda, Chairman;  
Ashley E. Poling, Vice Chairwoman;  
Mark Acton;  
Ann C. Fisher; and  
Robert G. Taub

Spanish Fort Post Office  
Spanish Fort, Alabama

Docket No. A2021-1

ORDER GRANTING MOTION TO DISMISS

(Issued February 10, 2021)

I. INTRODUCTION

On December 28, 2020, the City of Spanish Fort, Alabama (Petitioner) appealed the Postal Service's determination to close the Spanish Fort Community Post Office (Spanish Fort CPO) located in Spanish Fort, Alabama 36527.<sup>1</sup> Petitioner alleges that the Postal Service "has failed to adhere to the applicable laws, rules and regulations governing the discontinuance of post offices[.]" Petition at 1. On January 7, 2021, the Postal Service filed its answer, along with a motion to dismiss the appeal.<sup>2</sup> For the

---

<sup>1</sup> In the Matter of Spanish Fort, Alabama 36527 / Appeal of Postal Service Determination to Close Spanish Fort Post Office, December 28, 2020 (Petition). See also Application for Suspension of the Determination of the Postal Service to Close the Spanish Fort Post Office, December 28, 2020 (Application for Suspension of Determination); Participant Statement, December 28, 2020 (Participant Statement).

<sup>2</sup> United States Postal Service Answer in Opposition to Petitioner's Application for Suspension of Determination for the Spanish Fort Community Post Office, Spanish Fort, Alabama 36527, January 7, 2021 (Postal Service Answer Opposing Application for Suspension); United States Postal Service Motion to Dismiss Proceedings, January 7, 2021 (Motion to Dismiss).

reasons set forth below, the Commission grants the Postal Service's motion, and the appeal is dismissed.

## II. PROCEDURAL BACKGROUND

On December 28, 2020, Petitioner filed its appeal and an application to suspend the Postal Service's determination on the Spanish Fort CPO during the pendency of its appeal. See Petition; Application for Suspension of Determination. On December 29, 2020, the Commission established Docket No. A2021-1 to consider the appeal, designated a Public Representative, and established a procedural schedule for further submissions.<sup>3</sup>

On January 7, 2021, the Postal Service filed an answer, opposing Petitioner's Application for Suspension of Determination. Postal Service Answer Opposing Application for Suspension. The Postal Service also filed a motion to dismiss the appeal on that date. Motion to Dismiss.

On January 12, 2021, the Public Representative filed in support of Petitioner's Application for Suspension of Determination.<sup>4</sup> On January 14, 2021, Petitioner filed a motion to supplement its Application for Suspension of Determination.<sup>5</sup> The Application for Suspension of Determination was subsequently denied.<sup>6</sup>

Petitioner filed a brief opposing the Postal Service's Motion to Dismiss on January 19, 2021.<sup>7</sup> The Public Representative also filed an opposition to the Postal Service's motion.<sup>8</sup>

---

<sup>3</sup> Notice and Order Accepting Appeal and Establishing Procedural Schedule, December 29, 2020 (Order No. 5793).

<sup>4</sup> Public Representative Response Supporting Application to Suspend Closure, January 12, 2021 (PR Comments on Application for Suspension).

<sup>5</sup> Motion to Compel and Supplement to Application for Suspension of the Determination of the Postal Service to Close the Spanish Fort Post Office, January 14, 2021 (Motion to Supplement).

<sup>6</sup> Order Denying Application for Suspension, January 14, 2021 (Order No. 5815).

<sup>7</sup> Brief in Response to United States Postal Service's Motion to Dismiss Proceedings, January 19, 2021 (Petitioner Response to Motion to Dismiss).

On January 21, 2021, the Postal Service filed an answer in opposition to Petitioner’s Motion to Supplement.<sup>9</sup> Petitioner filed to amend its Participant Statement on January 27, 2021.<sup>10</sup>

As explained above, the Application for Suspension of Determination has been denied. See Order No. 5815. Currently before the Commission are the Postal Service’s Motion to Dismiss and the briefs filed in opposition to that motion.

### III. COMMENTS

The Commission has received letters from U.S. Senators Richard Shelby<sup>11</sup> and Tommy Tuberville<sup>12</sup> and U.S. Representative Jerry L. Carl.<sup>13</sup>

Senator Shelby comments that the Postal Service’s determination “presents several unique logistical challenges that are only heightened by the present COVID-19 environment.” Sen. Shelby Letter at 1. He states his concern that population growth in Spanish Fort and Baldwin County at large may “create unintended consequences.” *Id.* Senator Shelby also notes that “several members of the community, including local elected officials, have expressed frustration with USPS and the process that took place during the negotiations” surrounding the Spanish Fort CPO. *Id.* He asks that the Commission, “in accordance with all applicable laws and regulations, provide full and fair consideration to Spanish Fort’s appeal.” *Id.* at 2.

Senator Tuberville states that Spanish Fort is “projected to be the largest city in Baldwin County by 2035” and is “a city that that will continue to grow and thrive.” Sen.

---

<sup>8</sup> Public Representative Response to Postal Service Motion to Dismiss, January 19, 2021 (PR Response to Motion to Dismiss).

<sup>9</sup> United States Postal Service Answer in Opposition to Petitioner’s Motion to Compel and Supplement to Application for Supsension [sic], January 21, 2021 (Postal Service Answer to Motion to Supplement).

<sup>10</sup> Amended Participant Statement and Brief in Support of the Petition, January 27, 2021 (Amended Participant Statement).

<sup>11</sup> Letter from U.S. Senator Richard Shelby, January 12, 2021 (Sen. Shelby Letter).

<sup>12</sup> Letter from U.S. Senator Tommy Tuberville, January 13, 2021 (Sen. Tuberville Letter).

<sup>13</sup> Letter from U.S. Representative Jerry L. Carl, January 11, 2021 (Rep. Carl Letter).

Tuberville Letter at 1. He also notes that “representatives of Spanish Fort, including community members and elected officials, have expressed concern with how the process surrounding the decision to close . . . was handled.” *Id.* Senator Tuberville states that “the Commission should fairly consider Spanish Fort’s appeal, extend the present contract, and work directly with Spanish Fort officials to reach an agreeable solution to ensure residents are full served.” *Id.*

Representative Carl contends that “[a]s one of Alabama’s fastest growing cities, Spanish Fort deserves and requires a full-service post office.” Rep. Carl Letter at 2. He supports Petitioner’s appeal, citing “irregularities regarding the process and the inadequacy of the resolution proposed.” *Id.* at 1. Representative Carl argues that the Postal Service should not relocate the PO Boxes currently maintained at the Spanish Fort CPO because they “are vital for the many local businesses in Spanish Fort.” *Id.*

#### IV. COMMISSION ANALYSIS

##### A. Scope of Commission Jurisdiction

As the Commission has noted in the past, “there is a misunderstanding among the general public of the scope of Commission authority to review Postal Service decisions regarding the operation of its retail facilities.”<sup>14</sup> The Commission’s authority to review post office closings and consolidations is a limited power, prescribed by statute. See 39 U.S.C. § 404(d)(5). The Commission “may not modify the determination of the Postal Service.” *Id.* § 404(d)(5)(C). The only authority of the Commission—if a petitioner is successful—is the power to “order that the entire matter be returned for further consideration.” *Id.*

---

<sup>14</sup> Docket No. A2015-2, Order Dismissing Appeal, May 27, 2015, at 8 (*Careywood* or Order No. 2505).

In this case, as discussed further below, the Commission is not ruling on a motion to dismiss the appeal of a traditional post office, but rather on a motion to dismiss the appeal of a contractor-operated facility known as a community Post Office (CPO). The Commission's jurisdiction to hear appeals involving contractor-operated facilities such as CPOs, Village Post Offices (VPOs), and contract postal units (CPUs) is more limited than its power with respect to post offices, stations, and branches. As established in almost 40 years of Commission precedent, the Commission only possesses jurisdiction over CPO, VPO, and CPU closure and consolidation cases where the facility in question is the "sole source" of postal services for the community.<sup>15</sup> This limitation to the Commission's jurisdiction to hear the appeal of a CPO, VPO, or CPU does not affect the Commission's authority to hear the appeals of the closure or consolidation of any of the more than 31,000 Postal Service-operated retail facilities, including post offices, stations, and branches that may be located in rural, urban, or suburban areas throughout the nation.

#### B. The Sole Source Standard

The sole source test has been applied in four cases since it was established in the *Knob Fork* case in 1984: *East Elko Station*,<sup>16</sup> *Alplaus*,<sup>17</sup> *Careywood*, and *Rio Nido*.<sup>18</sup> In each of these cases the Commission determined that the CPO or CPU in question

---

<sup>15</sup> See Docket No. A83-30, *In re Knob Fork, West Virginia 26579*, Commission Opinion Remanding Determination for Further Consideration 39 U.S.C. § 404(b)(5), January 18, 1984 (*Knob Fork*).

<sup>16</sup> Docket No. A2010-3, Order Dismissing Appeal, June 22, 2010 (*East Elko Station* or Order No. 477).

<sup>17</sup> Docket No. A2012-88, Order Dismissing Appeal, March 21, 2012 (*Alplaus* or Order No. 1293).

<sup>18</sup> Docket No. A2017-2, Order Affirming Determination, September 1, 2017 (*Rio Nido* or Order No. 4088).

was not the community's sole source of postal services and, therefore, that the Commission did not possess jurisdiction to hear the appeal.<sup>19</sup>

The Commission's sole source assessment is comprehensive and has consistently considered distance of alternatives and potential drive time for mailers as well as the availability of carrier service. The *East Elko Station* appeal was dismissed because an alternative facility was in close proximity, 1.5 miles away. Order No. 477 at 7. Similarly, the Commission lacked jurisdiction over the *Alplaus* appeal because an alternative was 1 mile away with a drive time of 5 minutes and the area was provided carrier service. Order No. 1293 at 6. The *Rio Nido* appeal was dismissed because an alternative facility was 2.1 miles away, despite a lack of carrier service to the affected mailers. Order No. 4088 at 10-11. In *Careywood*, the Commission determined that the facility in question was not the sole source of postal services for the community where the best alternative was 7 miles away, with a 7 minute drive time, and mailers had access to rural carrier service. Order No. 2505 at 5, 13. Although the sole source standard depends on the facts of each case, these prior cases provide important guideposts for future evaluations.

### C. Petitioner's Arguments on the Sole Source Standard

Petitioner presents several arguments on how the sole source standard should be applied, generally. Petitioner requests a novel standard for heightened scrutiny, a new method of measuring drive time, and that the Commission reconsider the sole source standard entirely.

First, Petitioner contends that the Spanish Fort CPO must be the sole source of postal services for the community because it is the only retail facility located within the corporate limits of the Spanish Fort municipality. Motion to Supplement at 2; Petitioner Response to Motion to Dismiss at 12-13, 16-17. Petitioner suggests that "when the only

---

<sup>19</sup> Several other cases involving CPO and CPUs have been resolved without application of the sole source test. See, e.g., Docket No. A2021-1, Order Dismissing Appeal, September 1, 2020 (*Bellville* or Order No. 5662).

Post Office in the corporate limits of a municipality is closed, heightened review and scrutiny should be given.” Motion to Supplement at 2.

The Commission has not considered city limits in determining whether a facility is the sole source of postal services for a community in past cases. Indeed, the Commission has explicitly disclaimed this type of standard, finding that “[t]he sole source standard is not simply whether a facility is the only postal retail service facility located in a community.” Order No. 2505 at 12. Instead, the Commission has focused on geographic distance, drive time, and other factors that affect the practical accessibility of postal services. As the Postal Service points out, some mailers in Spanish Fort are closer to other retail facilities. Postal Service Answer to Motion to Supplement at 6. Indeed, the unique geographic shape of the Spanish Fort municipality highlights the arbitrary nature of using city limits for this purpose. Amended Participant Statement, Exhibit F. Petitioner does not explain how the territorial limits of a municipal corporation would affect the actual ability of mailers to access postal services or are otherwise relevant. For these reasons, the Commission declines to adopt this novel standard.

Second, Petitioner argues that “[t]he review should not be limited to the distances between the alternate Post Offices” and should instead consider the mailers who are most remote and, therefore, have the longest possible drive time. Motion to Supplement at 2. Petitioner also suggests that the Commission should consider occasional traffic conditions, such as accidents or congestion. *Id.* at 5. The Public Representative concurs, citing Petitioner’s statement that some residents sometimes have to drive as far as 15 miles to avoid traffic conditions and accidents. PR Response to Motion to Dismiss at 3.

The Commission has not considered the driving distances and times for individual mailers in past cases. Instead, the Commission has considered the distance between the facility subject to the appeal and the neighboring alternative facilities. See, e.g., Order No. 4088 at 10-11. The distance between facilities provides the maximum

additional distance a mailer would need to travel to access the next closest facility.<sup>20</sup> In contrast, the total distance for individual mailers is a much more complex, fact-specific inquiry. For example, it is unclear how to determine which mailers to include or how to weight their respective drive times. Since the Commission is considering the effect on the community at large, and not specific, individual mailers, it is more appropriate to consider the maximum additional distance, and this approach is consistent with the Commission's past practice.

Third, Petitioner argues that the Commission "should reconsider the 'sole source' rule . . . as it appears that, more often than not, jurisdiction is denied." Amended Participant Statement at 24. Petitioner contends that "[w]ith such a narrow application of the 'sole source' rule, many who have lost their post office would argue that there is no 'sole source' rule." *Id.* Petitioner also asks "How far is too far? What is the unambiguous/objective standard?" *Id.* at 20.

The Commission declines to reconsider the sole source standard. The sole source doctrine, which the Commission has relied upon for more than 30 years, constitutes a reasonable interpretation of section 404(d), which is ambiguous with respect to the meaning of the term "post office." See *generally Knob Fork*. The sole source standard provides the Commission with the ability to exercise jurisdiction with respect to CPOs and CPUs in particular circumstances in which a community would lack any access to postal services, which is consistent with the intent of section 404(d). *Id.* It allows the Commission to consider a wide variety of factors, in part due to the wide variety and evolving methods to access postal services. The sole source standard has worked reasonably well to protect the interests of all stakeholders (Order No. 2505 at 14), and while the balance may not be satisfactory for every stakeholder in every case, future legislation may address the ambiguity in section 404(d).

---

<sup>20</sup> If the mailer currently travels to the Spanish Fort CPO, the maximum additional distance is the distance between the Spanish Fort CPO and the next closest facility.

#### D. Application of the Sole Source Standard

In the instant case, the parties agree that the best alternative retail facility is the neighboring Daphne Post Office. In fact, the Spanish Fort CPO was originally established as an extension of the Daphne Post Office.<sup>21</sup> The Daphne Post Office is located 4.8 miles from the Spanish Fort CPO with a drive time of approximately 10 minutes.<sup>22</sup> Retail services are also available at the Montrose and Mobile post offices, which are 7.3 and 8.9 miles away from the Spanish Fort CPO, respectively.

Petitioner and the Public Representative each take the position that the Daphne Post Office, and the Montrose and Mobile post offices, are too distant to serve the Spanish Fort community and, therefore, that the Spanish Fort CPO is the sole source of postal services for the community. Petitioner Response to Motion to Dismiss at 11-16; PR Response to Motion to Dismiss at 3-5. However, Commission precedent demonstrates that the Spanish Fort CPO is not the sole source of postal services for the Spanish Fort community.

The two most analogous precedents to the instant case are *Rio Nido* and *Careywood*. In *Rio Nido*, the Commission found that the facility in question was not the sole source of postal services for mailers who did not receive any carrier service when the alternative facility was 2.1 miles away. Order No. 4088 at 10-11. In contrast, mailers in Spanish Fort will continue to have direct access to postal services in the form of rural carrier service and a retail facility that is only 2.7 miles farther away than the alternative facility in *Rio Nido*. In *Careywood*, the Commission found that the sole source test was not satisfied where an alternative retail facility was 7 miles farther away.

---

<sup>21</sup> *Postal Bulletin* No. 20277, October 26, 1961, at 3, available at: [http://www.uspostalbulletins.com/PDF/Vol82\\_Issue20277\\_19611026.pdf](http://www.uspostalbulletins.com/PDF/Vol82_Issue20277_19611026.pdf).

<sup>22</sup> Petitioner alleges that drive times will be longer for some mailers because they live farther from the Daphne Post Office and traffic conditions can impede their progress. Motion to Supplement at 5. However, the Commission reviews the average drive time from the facility subject to closure.

Here, the closest retail alternative, the Daphne Post Office, is 4.8 miles away, which is 2.2 miles closer to the Spanish Fort CPO than the alternative facility in *Careywood*.<sup>23</sup>

Notably, the sole source test does not consider whether the facility “is the most convenient or desirable source of postal services.” Order No. 2505 at 13. It focuses on whether postal services are available. In Spanish Fort, the Postal Service has expanded its rural carrier service to accommodate the population growth noted by stakeholders in this docket. Postal Service Answer to Motion to Supplement at 5. Mailers in Spanish Fort have the ability to purchase stamps as part of their rural carrier service, as well as access to other services via *www.usps.com*. As the Commission has noted, “Congress envisioned the changing nature of access to retail options . . . , which among other things, includes plans to expand alternate retail options to postal services including the Internet and non-post office access channels.” Order No. 2505 at 12. For these reasons, the Commission cannot determine that the Spanish Fort CPO is the sole source of postal services for the Spanish Fort community.

#### E. Petitioner’s Other Jurisdictional Arguments

Petitioner presents two other arguments related to jurisdiction. The Commission is not persuaded by either of these arguments.

First, Petitioner argues that the Commission should not dismiss this case without the benefit of an administrative record. Amended Participant Statement at 8-9. Petitioner contends that “[w]ithout access to the administrative record and the facts and findings contained therein, Petitioner is unable to properly appeal this matter.” *Id.* at 23. In Petitioner’s view, “[i]n the absence of such record, . . . it is not possible to fully consider the merits of the matter presently before this Commission.” *Id.* at 9. However, the Commission must possess jurisdiction over the Spanish Fort CPO to reach the merits of this case.

---

<sup>23</sup> The drive time between the facilities, which is inherently variable, is approximately 10 minutes in this case compared to 7 minutes in *Careywood*. Order No. 2505 at 11.

The administrative record is not necessary here because the issue before the Commission is jurisdictional and the facts related to that issue are undisputed. Neither party disputes the distance between the Spanish Fort CPO and the Daphne Post Office or other retail alternatives, the approximate drive time between these locations, the presence of rural carrier service to Spanish Fort mailers, or other factors relevant to evaluating the sole source standard.

As the Postal Service notes, the administrative record in post office closure and consolidation cases documents the Postal Service's compliance with "a range of procedures (e.g., public meetings and requests for comments) which the Postal Service need not implement when contractual arrangements like the present one expire." Postal Service Answer to Motion to Supplement at 3. For this reason, the Commission has consistently acted on motions to dismiss without requiring an administrative record. See, e.g., Docket No. A2020-1.

Second, Petitioner contends that contractor-operated facilities, such as CPOs, VPOs, and CPUs, are post offices and should be provided the same statutory appeal process, pursuant to 39 U.S.C. § 404(d). Amended Participant Statement at 13-19. Petitioner argues that the Postal Service has created an impermissible exception to the phrase "any post office" in the statute by excepting contractor-operated facilities, that the statute's language must control over the Postal Service's conflicting interpretation, and that the Postal Service's interpretation violates the non-delegation doctrine, a legal principle that prohibits the delegation of legislative powers from Congress to another party without an intelligible guiding principle, to which the delegee is required to conform. *Id.*

Each of these arguments hinge on Petitioner's reading of the term "post office" in § 404(d)(1). Petitioner argues that CPOs and CPUs should be included as post offices, noting that the statute does not define the term. *Id.* at 16. It appears that Petitioner is contending that a plain language reading of the statute would include any contract retail facility such as CPOs, VPOS, and CPUs because of the statute's phrase "any post office."

The Postal Service, in *Knob Fork* and subsequent cases, has consistently taken the position that the Commission lacks jurisdiction over contractor-operated facilities such as CPOs, VPOs, and CPU closings entirely because those facilities are not “post offices.” In *Knob Fork*, the Commission noted the “latent ambiguity” in the statute’s use of the term “post office.” *Knob Fork* at 3. The Commission determined that there was a natural conflict between the technical and common sense definitions of the term. *Id.* The Commission then looked to the legislative history, which it determined did not provide a definitive answer as to what Congress intended. *Id.* at 5. Nevertheless, the Commission concluded that § 404(d)(1) applies to contractor-operated facilities because “[a]n important intent . . . of Congress was to apply § 404[] to the closing of the sole postal retail facility serving a community.” *Id.* at 8. In other words, the Commission determined that the term “post office” is ambiguous but that Congress clearly intended to include contractor-operated facilities within that term when they are the sole source of postal services for a community.

Petitioner argues for a more expansive reading, which appears to include any facility that displays Postal Service trademarks as a post office. Amended Participant Statement at 18-19. Petitioner appears to contend that the statute’s use of the term “post office” is unambiguous and, therefore, amenable to a plain language reading that would include CPOs, VPOs, and CPUs.<sup>24</sup> However, this is inconsistent with *Knob Fork* and does not appreciate the significant differences between post offices, branches, and stations, which are operated by the Postal Service, and CPOs, VPOs, and CPUs, whose “existence derives solely from the terms and conditions of a voluntary contract.” Postal Service Answer Opposing Application for Suspension at 2.

In *Knob Fork*, the Commission was faced with the difficult task of resolving the latent ambiguity between differing definitions of the term “post office.” The Commission has since determined that Congress intended to provide the procedures under § 404(d) only when those contractor-operated facilities are the sole source of postal services for

---

<sup>24</sup> Elsewhere Petitioner concedes that there is ambiguity. *Id.* at 19.

a community. Petitioner's arguments cannot be sustained, given the *Knob Fork* case and its progeny. For that reason, Petitioner's arguments that the Postal Service has misinterpreted or otherwise violated the intent of 39 U.S.C. § 404(d) must be rejected.

#### F. Petitioner's Remaining Arguments

Petitioner advances a myriad of other arguments, the bulk of which address the underlying merits of the appeal or general notions of equity. Petitioner argues, *inter alia*, that public policy weighs in favor of the appeal,<sup>25</sup> that the Postal Service misled public officials,<sup>26</sup> that the Spanish Fort CPO is profitable,<sup>27</sup> that the surrounding community is growing in population,<sup>28</sup> that the Postal Service would not be disadvantaged by an appeal,<sup>29</sup> that social distancing initiatives would be promoted by sustaining the appeal,<sup>30</sup> and that the Spanish Fort CPO's PO Boxes are important to local businesses.<sup>31</sup>

However, the Commission cannot reach these arguments without jurisdiction to hear the case. As explained above, the Commission does not possess jurisdiction and therefore cannot consider the merit of these arguments because the Spanish Fort CPO is not the sole source of postal services for the community.

---

<sup>25</sup> Amended Participant Statement at 23-24.

<sup>26</sup> *Id.* at 10.

<sup>27</sup> *Id.* at 11.

<sup>28</sup> *See, e.g., id.* at 12.

<sup>29</sup> *Id.* at 25-26.

<sup>30</sup> *Id.* at 7.

<sup>31</sup> *Id.* at 6, 13, 21-22.

V. CONCLUSION

The Commission concludes that the Spanish Fort CPO is not the sole source of postal services for the Spanish Fort community and, therefore, that the Commission lacks jurisdiction to hear the instant appeal. For the reasons set forth above, the Postal Service's Motion to Dismiss is granted and the appeal is dismissed with prejudice.

VI. ORDERING PARAGRAPH

*It is ordered:*

The Petition for Review of the decision to close the Spanish Fort, Alabama CPO is dismissed with prejudice.

By the Commission.

Erica A. Barker  
Secretary