

Before the  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Neskowin Post Office  
Neskowin, OR

Docket No. A2021-2

PUBLIC REPRESENTATIVE RESPONSE  
SUPPORTING MOTION TO DISMISS

(June 17, 2021)

On May 26, 2021, David Benneth appealed the Postal Service's determination to close the Neskowin community post office (CPO) located in Neskowin, Oregon 97149.<sup>1</sup> Order No. 5902 established this docket to consider the Petition, set forth a procedural schedule, and designated the undersigned Public Representative.<sup>2</sup> On June 7, 2021, 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. The Commission should grant the Postal Service's motion and dismiss this appeal.

I. ANALYSIS

Postal regulations governing post office discontinuances do not apply to CPOs and other contractor-operated post offices. Also, the Commission lacks jurisdiction to consider this appeal because the Neskowin CPO is not the "sole source" of retail services for the Neskowin community. For these reasons, the Public Representative recommends that the Commission grant the Motion to Dismiss.

A. POSTAL DISCONTINUANCE REGULATIONS DO NOT APPLY TO CPOs

Postal Service regulations governing post office closings are codified in 39 C.F.R. § 241.3. These regulations distinguish between post offices operated by a Postal Service

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<sup>1</sup> Petition for Review Received from David Benneth Regarding the Neskowin, OR Post Office, May 26, 2021.

<sup>2</sup> Notice and Order Accepting Appeal and Establishing Procedural Schedule, May 28, 2021 (Order No. 5902).

<sup>3</sup> United States Postal Service Motion to Dismiss Proceedings, June 7, 2021 (Motion to Dismiss).

employee and post offices operated by a third-party contractor. Postal Service-operated post offices include “any Postal Service employee-operated Post Office, station, or branch, but does not include any station, branch, [CPO], or other retail facility operated by a contractor.” 39 C.F.R. § 241.3(a)(2)(i). Conversely, contractor-operated post offices include “any station, branch, [CPO], or other facility, including a private business, offering retail postal services that is operated by a contractor, and does not include any [Postal Service]-operated retail facility.” *Id.* § 241.3(a)(2)(ii).

There are three types of contractor-operated post offices: CPOs, Contract Postal Units (CPUs), and Village Post Offices (VPOs).<sup>4</sup> The Neskowin CPO is considered a contractor-operated post office under the Postal Service’s regulations. However, 39 C.F.R. § 241.3, which governs post office closings, applies to closures of Postal Service-operated post offices, but not to contractor-operated post offices such as the Neskowin CPO. See 39 C.F.R. § 241.3(a)(1)(i). Because contractor-operated post offices are not subject to the requirements of section 241.3, the Postal Service was not required to follow them when closing the Neskowin CPO.

B. THE NESKOWIN CPO IS NOT THE “SOLE SOURCE” OF POSTAL SERVICES

The Commission determines its jurisdiction to consider appeals of Postal Service decisions to close or consolidate contractor-operated post offices by applying the “sole source” standard. The Commission has consistently held that it “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>5</sup> It previously explained that “[t]he sole source standard is not simply whether a facility is the only postal retail service facility located in a community. The standard is whether that retail facility is the sole provider of services to a community.” Order No. 2505 at 12. The Commission determines whether a

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<sup>4</sup> The Commission discusses CPOs, CPUs, and VPOs in detail in the FY 2020 *Annual Compliance Determination*. Postal Regulatory Commission, Annual Compliance Determination Report Fiscal Year 2020, March 29, 2021, at 210.

<sup>5</sup> Docket No. A2021-1, Order Granting Motion to Dismiss, February 10, 2021, at 5 (Order No. 5831) (*Spanish Fort*); see Docket No. A2017-2, Order Affirming Determination, September 1, 2017, at 8 (Order No. 4088) (*Rio Nido*); Docket No. A2015-2, Order Dismissing Appeal, May 27, 2015, at 9 (Order No. 2505) (*Careywood*).

CPO, CPU, or VPO is the “sole source” of postal services to the affected community by considering several factors, including distance of alternative post offices, potential driving time for mailers to nearby post offices, and the availability of carrier service. Order No. 5831 at 6. Because the Neskowin CPO is not the “sole source” of postal services for Neskowin residents, the Commission lacks jurisdiction to consider the appeal of the Neskowin CPO closing.

In past post office closing appeals, the Commission found it lacked jurisdiction to hear the appeals of four closings of contractor-operated post offices (CPOs, CPUs, and VPOs) because they were not the “sole source” of postal services in their communities. In *Rio Nido*, the Commission weighed several factors, such as the Postal Service moving the Post Offices Boxes at the Rio Nido CPO to a nearby post office located 2.1 miles away. Order No. 4088 at 10. It also considered access to postal services on *www.usps.com*, alternative stamp purchasing options such as grocery stores, and the availability of carrier service. *Id.* at 11. After weighing these factors, the Commission concluded 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 lacked jurisdiction to hear the appeal of the Rio Nido CPO closing. *Id.* at 11-12.

Similarly, in *Careywood* the Commission applied the “sole source” standard to the Careywood CPU and found that it was not the “sole source” of postal services to the community. Order No. 2505 at 10-13. 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*. *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 nearby post office approximately 1 mile away, access to postal services via *www.usps.com*, and more than 20 other alternate access options located within 5 miles of the Alplaus CPO.<sup>6</sup> In *Spanish Fort*, a recent post office closing appeal, the Commission determined that the Spanish Fort VPO was not the “sole source” of postal services for the Spanish Fort

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

community because “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*.” Order No. 5831 at 9. The Commission also considered customers’ ability to purchase stamps and other postal services via *www.usps.com*. *Id.* at 10.

Similar to *Rio Nido*, *Careywood*, *Alplaus*, and *Spanish Fort*, the Neskowin CPO Post Offices Boxes will be relocated to a nearby post office approximately 9.5 miles away. Motion to Dismiss at 3. The Neskowin community will be served by nearby post offices located approximately 7.3 to 10.8 miles away. *Id.* at 13-14. All customers of the Neskowin CPO will remain eligible to receive delivery services from a Highway Contract Route carrier. *Id.* at 4. Customers will also have access to postal services provided by *www.usps.com*, as well as alternative stamp purchasing options offered by area retail businesses. *Id.* at 14.

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

## II. CONCLUSION

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

Respectfully submitted,

Katrina R. Martinez  
Public Representative