

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

Neskowin Post Office
Neskowin, OR

Docket No. A2021-2

ORDER GRANTING MOTION TO DISMISS

(Issued June 23, 2021)

I. INTRODUCTION

On May 26, 2021, David Benneth (Petitioner) appealed the Postal Service's determination to close the Neskowin Community Post Office (Neskowin CPO) located in Neskowin, Oregon, 97149.¹ Petitioner alleges that the Postal Service has failed to adhere to the applicable laws, rules, and regulations governing the discontinuance of post offices as the notice to close the Neskowin CPO "was dated May 19, 2021 informing me of a closing on May 29, 2021[,] which does not seem to comply with the 60 day notice requirement." Participant Statement at 5. On June 7, 2021, the Postal

¹ In the Matter of Neskowin, Oregon 97149 / Appeal of David Benneth to Close Neskowin Post Office, May 26, 2021 (Petition). See Participant Statement, May 26, 2021 (Participant Statement).

Service filed a motion to dismiss the appeal.² For the reasons set forth below, the Commission grants the Postal Service’s motion, and the appeal is dismissed.

II. PROCEDURAL BACKGROUND

On May 26, 2021, Petitioner filed his appeal regarding the Postal Service’s determination to close the Neskowin CPO. See Petition. On May 28, 2021, the Commission established Docket No. A2021-2 to consider the appeal, designated a Public Representative, and established a procedural schedule for further submissions.³

On June 7, 2021, the Postal Service filed a motion to dismiss the appeal. Motion to Dismiss. On June 17, 2021, the Public Representative filed in support of the Postal Service’s Motion to Dismiss.⁴

Currently before the Commission is the Postal Service’s Motion to Dismiss.

III. 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.”⁵ 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

² United States Postal Service Motion to Dismiss Proceedings, June 7, 2021 (Motion to Dismiss).

³ Notice and Order Accepting Appeal and Establishing Procedural Schedule, May 28, 2021 (Order No. 5902).

⁴ Public Representative Response Supporting Motion to Dismiss, June 17, 2021 (PR Response).

⁵ See Docket No. A2015-2, Order Dismissing Appeal, May 27, 2015, at 8 (*Careywood* or Order No. 2505); see also Docket No. A2021-1, Order Granting Motion to Dismiss, February 10, 2021 (*Spanish Fort* or Order No. 5831).

petitioner is successful—is the power to “order that the entire matter be returned for further consideration.” *Id.*

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.⁶ 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 five cases since it was established in the *Knob Fork* case in 1984: *East Elko Station*,⁷ *Alplaus*,⁸ *Careywood*, *Rio Nido*,⁹ and most recently *Spanish Fort*. In each of these cases the Commission determined that

⁶ 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*).

⁷ Docket No. A2010-3, Order Dismissing Appeal, June 22, 2010 (*East Elko Station* or Order No. 477).

⁸ Docket No. A2012-88, Order Dismissing Appeal, March 21, 2012 (*Alplaus* or Order No. 1293).

⁹ Docket No. A2017-2, Order Affirming Determination, September 1, 2017 (*Rio Nido* or Order No. 4088).

the CPO or CPU in question was not the community's sole source of postal services and, therefore, that the Commission did not possess jurisdiction to hear the appeal.¹⁰

The Commission's sole source assessment is comprehensive and has consistently considered the 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, with a drive time of 8 minutes, 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. In *Spanish Fort*, the Commission noted that all parties agreed that the best alternative retail facility was the neighboring Daphne Post Office, which was located 4.8 miles away, and an approximately 10 minute drive. Order No. 5831 at 9. Although the sole source standard depends on the facts of each case, these prior cases provide important guideposts for future evaluations.

C. Application of the Sole Source Standard

In the instant case, the best alternative retail facility is the neighboring Cloverdale Post Office. During prior instances of CPOs operating in Neskowin closing, the Postal Service temporarily moved the Post Office Boxes housed in the CPO to the Cloverdale Post Office, which the Postal Service stated it will do in this instance, with customers being allowed to retain the Post Office Box address and Zip Code of the Neskowin

¹⁰ 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).

CPO, and continue to use their current Post Office Box keys. Motion to Dismiss at 3-4. The Cloverdale Post Office is located 9.5 miles from the Neskowin CPO with a drive time of approximately 12 minutes.¹¹ Retail services are also available at the Otis, Pacific City, and Neotsu Post Offices located 7.3, 9.3, and 10.5 miles away from the Neskowin CPO, respectively, as well as the Kennys IGA CPO located 10.8 miles away.

Petitioner takes the position that the Cloverdale Post Office is too distant to serve the Neskowin community and, therefore, that the Neskowin CPO is the sole source of postal services for the community. See Participant Statement. However, Commission precedent demonstrates that the Neskowin CPO is not the sole source of postal services for the Neskowin community.

The three most analogous precedents to the instant case are *Rio Nido*, *Careywood*, and *Spanish Fort*. 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, with a drive time of 8 minutes. Order No. 4088 at 10-11. In contrast, mailers in Neskowin will continue to have access to postal services in the form of a Highway Contract Route carrier¹² and a retail facility that is only 5.2 miles and a 4 minute drive 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 and a 7 minute drive away. Similarly, here the closest retail alternative, the Otis Post Office, is 7.3 miles and a 10 minute drive away.¹³ In *Spanish Fort*, the Commission found that the sole source test was not satisfied where an alternative retail facility was only 4.8 miles and a 10 minute drive away; the Postal Service had expanded its rural carrier service to accommodate the population growth of the area; and the mailers in *Spanish Fort* had the ability to

¹¹ Source: Google Maps driving distance from Neskowin CPO to the respective address of the Cloverdale Post Office.

¹² Motion to Dismiss at 4.

¹³ Source: Google Maps driving distance from Neskowin CPO to the respective address of the Otis Post Office.

purchase stamps as part of their rural carrier service and had access to other services via *www.usps.com*. Order No. 5831 at 10.

As the Commission noted in *Spanish Fort*, the sole source test does not consider whether the facility “is the most convenient or desirable source of postal services.” *Id.*; Order No. 2505 at 13. It focuses on whether postal services are available. In Neskowin, customers will remain eligible to receive delivery services from a Highway Contract Route carrier. Motion to Dismiss at 4. The Postal Service states “[m]ore specifically, customers will continue to receive normal delivery services and can in addition obtain pre-ordered stamps and packaging supplies.” *Id.* The Postal Service notes “[i]n addition, Neskowin currently hosts two [Cluster Box Units] CBUs, one at the Sahhali Shores location, and one at the Pacific Overlook location. These points of access will remain operative, and customers can use them to send and receive mail and packages and to obtain pre-ordered stamps and packaging supplies.” *Id.* at 4-5. The Commission notes “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.”¹⁴ For these reasons, the Commission cannot determine that the Neskowin CPO is the sole source of postal services for the Neskowin community.

¹⁴ Order No. 2505 at 12. As the Postal Service noted in its Motion to Dismiss, Neskowin has a long history of Postal Service. See Motion to Dismiss at 2. The Neskowin independent Post Office was discontinued on July 31, 1959, and was replaced by a contractor-operated retail unit on August 1, 1959. The Postal Service states “[s]ince that time, Neskowin has been served by contractor-operated retail units.” *Id.* On May 16, 2006, a CPO opened and was subsequently terminated and closed on May 15, 2009. *Id.* For a 9-month period, during which no retail units operated in Neskowin, the Postal Service temporarily moved the Post Office Boxes housed in the CPO to the Cloverdale Post Office. *Id.* at 2-3. On March 1, 2010, a different supplier opened a CPO, and it was subsequently terminated on January 31, 2014. *Id.* at 2. On February 1, 2014, the Postal Service moved and installed these boxes to the CPO that is the subject of this case. See *id.* at 2-3. The contract in question was terminated upon the suppliers’ retirement on May 31, 2021, with an indication that, although not a guarantee, the Postal Service represents that it “intends, in the near future, to initiate a bid solicitation process in order to secure a new contractor operated retail unit in Neskowin.” *Id.* at 3, 5.

D. Petitioner’s Argument Regarding Lack of Sufficient Notice

The petitioner alleges that the Postal Service has failed to adhere to the applicable laws, rules and regulations governing the discontinuance of post offices due to providing insufficient notice for closing the Neskowin CPO as required per 39 C.F.R. § 241.3. However, the Commission must possess jurisdiction over the Neskowin CPO to reach the merits of this case.

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 39 U.S.C. § 404(d)(1) applies to contractor-operated facilities because “[a]n important intent . . . of Congress was to apply § 404[(d)]¹⁵ 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.

As explained above, the Neskowin CPO is not the sole source of postal services for the Neskowin community, and therefore, the Commission does not possess jurisdiction and cannot consider the merit of the petitioner’s argument.

The Public Representative concurs that “[b]ased on [the] factors, the Neskowin CPO cannot be considered the ‘sole source’ of postal services for Neskowin

¹⁵ The content of 39 U.S.C. § 404(d) appeared as 39 U.S.C. § 404(b) at the time of publication for the *Knob Fork* decision.

residents[,]” and therefore “the Commission lacks jurisdiction to consider the appeal of the Neskowin CPO closing.” PR Response at 4.

IV. CONCLUSION

The Commission concludes that the Neskowin CPO is not the sole source of postal services for the Neskowin 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.

V. ORDERING PARAGRAPH

It is ordered:

The Petition for Review of the decision to close the Neskowin, Oregon CPO is dismissed with prejudice.

By the Commission.

Mallory Smith
Federal Register Liaison