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UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

Before Commissioners: Edward J. Gleiman, Chairman;
George A. Omas, Vice Chairman;
Dana B. Covington, Sr.; Ruth Y. Goldway;
and W.H. "Trey" LeBlanc III

Complaint of Borough of Throop

Docket No. C99-5

ORDER DISMISSING COMPLAINT

(January 21, 2000)

Procedural History. On July 19, 1999, Borough of Throop ("Throop" or "Complainant") filed a "Complaint of Throop Borough" ("Complaint") pursuant to Rate and Service Complaints, 39 U.S.C. § 3662, and Rules Applicable to Rate and Service Complaints, 39 C.F.R. Ch. III, Subpart E. The Complainant alleges that the United States Postal Service has failed to provide postal services in accordance with the policies of the Postal Reorganization Act, 39 U.S.C. § 101 et seq. — specifically violating the requirements of 39 U.S.C. § 101(a) for "prompt, reliable, and efficient services to patrons in all areas." Complaint at 1, 4. The basis of the Complaint is Throop's belief that the assignment of a unique ZIP Code to the Borough of Throop will cure its alleged service problems. The Postal Service has twice rejected Throop's proposed solution by denying requests to assign a unique ZIP Code to Throop. The Complaint requests the Commission to grant the specific relief of entering a decision and report recommending that Throop be granted the exclusive ZIP Code of 18511. Complaint at 4.

On August 18, 1999, the United States Postal Service filed an "Answer of the United States Postal Service" ("Answer"), which included a statement that it would file a motion to dismiss the Complaint. Answer at 1. The position of the Postal Service is that the subject matter of the Complaint does not fall within the scope of 39 U.S.C.

§3662 or any other grant of jurisdiction to the Commission. Answer at 1. Furthermore, if the Commission did find the Complaint appropriate for consideration, the Commission is limited to rendering a public report to the Postal Service and the Postal Service is left to take such action as it deems appropriate in response to such report. Answer at 8.

On August 18, 1999, the United States Postal Service filed a "Motion of United States Postal Service to Dismiss Complaint" ("Motion to Dismiss") providing four rationales for dismissal. First, Congress has placed issues concerning operational matters within the exclusive discretion of the Postal Service and outside the Commission's jurisdiction. Motion to Dismiss at 2. Second, this is an individual, localized service issue not on a substantially nationwide basis, 39 C.F.R. § 3001.82, referring to matters of policy not normally considered by the Commission. Id. Third, other forms of relief may be available to resolve the Complainant's alleged service problems without resorting to providing an exclusive ZIP Code for the Borough of Throop.¹ Id. Fourth, the Complaint fails to raise a matter of policy to be considered by the Commission. Id at 5.

On August 30, 1999, Throop filed a "Reply to the United States Postal Service Motion to Dismiss Complaint" ("Reply") countering the Motion to Dismiss made by the Postal Service. The Complainant claims that 39 U.S.C. § 3662 was designed specifically to resolve this type of complaint and, thus, this matter is within the jurisdiction of the Commission. Reply at 1-2. The Complainant further argues the relevance of the Postal Service claim that this is only an individual, localized issue — alleging that 39 C.F.R. § 3001.82 only allows the Commission authority to decline a hearing,² not the authority to dismiss the Complaint. Id. at 2-3. The Complainant also

¹ The Postal Service suggested, as an alternative solution, realignment of ZIP Codes such that Throop falls within one ZIP Code. The Borough of Throop has not expressed an interest in this alternative solution and continues to pursue a unique ZIP Code. Answer at 3.

² The Complainant is attempting to distinguish holding a formal hearing on the complaint, from being heard at all.

reiterates the general postal policy of providing "prompt, reliable, and efficient services to patrons in all areas," 39 U.S.C. § 101(a), as the basis for its complaint.³ *Id.* at 3.

Facts of the Controversy. Throop is presently served by two post offices and associated ZIP Codes — Dunmore, Pennsylvania 18512 and Olyphant, Pennsylvania 18447. Complaint at 2. Approximately 200 delivery points in Throop are served by the Olyphant post office, and may not use the designation "Throop" in the last line of their address. Answer at 5. The Complainant alleges a variety of problems resulting from Throop not being covered under a single, unique ZIP Code. In particular, Throop alleges: undue delay in receiving mail because it is being sent to other communities which have some of the same street names as Throop; incorrect response by emergency vehicles because of address confusion; residents not receiving state and federal tax forms; the Postal Service using incorrect names in the address of Throop customers; the 1999 Census may have underestimated Throop's population; driver's licenses and other documents inaccurately state Throop residence identifications; and colleges, national business firms, and federal and state governments label mail destined for Throop to another local community. Complaint at 2-3.

Throop approached the Postal Service in the early 1990s to see whether Throop could be assigned a new, unique ZIP Code. Answer at 2. This resulted in the Postal Service performing a customer survey in early 1995 asking whether the residents of Throop supported a change to a new, unique ZIP Code. *Id.* The Postal Service, both verbally and within the customer survey, incorrectly indicated that a simple majority vote in favor of changing to the new ZIP Code was all that was necessary to trigger assignment of a new ZIP Code. *Id.* at 2, 7. The Postal Service also indicated to Throop that 18511 would be its new ZIP Code if the survey results were positive. *Id.* at

³ The Reply, for the first time, raised the Postal policy stated in 39 U.S.C. § 101(e), in determining all policies for postal services, the Postal Service shall give the highest consideration to the requirement for the most expeditious collection, transportation, and delivery of important letter mail. Reply at 3. Although considered, inclusion of this new policy issue does not affect the outcome of the decision.

2. The customer survey results showed overwhelming support for the new ZIP Code. *Id.*, Complaint at 3. Although there was community support and the Postal Service had represented that simple majority support on the survey would trigger assignment of the new ZIP Code, Postal Service headquarters denied the request to assign a new ZIP Code to Throop. *Id.* Postal Service headquarters based its decision on not finding an operational benefit to providing Throop with a unique ZIP Code. Answer at 2. Throop appealed this decision to the Postal Service unsuccessfully. *Id.*

During the same time period that Throop was requesting and being denied a unique ZIP Code, the Postal Service approved a request to provide a business that is located within Throop with a unique ZIP Code.⁴ Complaint at 4, Answer at 7. The Postal Service alleges that the decision was based on the operational benefits to the Postal Service in handling that business's large originating and destinating mail volumes. Answer at 7. Throop appears to be questioning why a local business's request for a unique ZIP Code was approved and Throop's similar request was denied.

Legal Arguments Summary. The Complainant alleges that the Postal Service is not rendering services in conformity with the policies set forth in the Postal Reorganization Act, specifically failure to conform with the policy of providing "prompt, reliable, and efficient service to patrons in all areas." Complaint at 4. This claim is supported by several general examples of alleged service problems. *Id.* at 2-3. The Complainant suggests that the service problems could be remedied by the Postal Service if the Postal Service would provide a single, unique ZIP Code for Throop. After unsuccessfully pursuing this solution to the alleged service problems with the Postal Service, the Complainant looks to the Commission, pursuant to 39 U.S.C. § 3662, seeking relief.

The gravamen of the Postal Service Answer and Motion to Dismiss can be summarized as follows. The subject matter of the Complaint does not fall within the

⁴ The unique ZIP Code for the local Throop business was assigned in April of 1995. Answer at 7.

scope of 39 U.S.C. § 3662 or any other grant of jurisdiction to the Commission. Answer at 1. The Postal Service argues that this is an individual, localized service issue not occurring on a substantially nationwide basis. Thus, the Complaint should be dismissed because it is not the type of issue normally considered by the Commission. Motion to Dismiss at 2. Furthermore, the Complaint fails to raise a matter of policy, as required by § 3662, to be considered by the Commission. Id at 5.

The Postal Service further argues that Congress has placed issues concerning operational matters within the exclusive discretion of the Postal Service and outside the Commission's jurisdiction. Motion to Dismiss at 2.

The Complainant, in disagreeing with the Postal Service, claims that 39 U.S.C. §3662 was designed specifically to resolve this type of complaint and, thus, this matter is within the jurisdiction of the Commission.⁵ Reply at 1-2. The Complainant contests the relevance of the Postal Service claim that this is only an individual, localized issue — alleging that 39 C.F.R. § 3001.82 only allows the Commission authority to decline a hearing, not the authority to dismiss the Complaint. Id. at 2-3. The Complainant requests that the Motion to Dismiss be denied. Id. at 4.

Commission Analysis. The Throop Complaint is brought pursuant to Rate and Service Complaints, 39 U.S.C. § 3662, and Rules Applicable to Rate and Service Complaints, 39 C.F.R. Ch. III, Subpart E. An exploration of the scope and application of § 3662 and of 39 C.F.R. § 3001.82⁶ is necessary to determine the instant Motion to Dismiss.

⁵ The Complainant cites *Tedesco v. U.S. Postal Service*, 553 F.Supp. 1387 (W.D. Pa. 1983) as support for the Commission having jurisdiction of this matter pursuant to 39 U.S.C. § 3662. Reply at 1-2. *Tedesco* held that "the Postal Reorganization Act does not create a private right of action for alleged service inadequacies." *Tedesco* at 1391. Thus, the court in *Tedesco* dismissed the complaint for lack of subject matter jurisdiction. Id. The court noted that the plaintiff has a right to bring a grievance to the attention of the Commission pursuant to 39 U.S.C. § 3662. Id.

⁶ Section 82 is the pertinent section of 39 C.F.R., Ch. III, Subpart E, concerning the scope and nature of complaints.

Section 3662 defines two categories of parties that may lodge a rate or service complaint:

Interested parties who believe the Postal Service is charging rates which do not conform to the policies set out in this title or who believe that they are not receiving postal service in accordance with the policies of this title may lodge a complaint with the Postal Rate Commission in such form and in such manner as it may prescribe.

39 U.S.C. § 3662. The party must either (1) believe the Postal Service is charging rates which do not conform to the policies set out in Title 39, or (2) believe that they are not receiving postal service in accordance with the policies of Title 39.⁷ Authority is further provided to the Commission to specify the form and manner of how complaints will be entertained.⁸

Throop clearly alleges several service-related issues that were previously reviewed in the *Facts of the Controversy*. The Complaint further alleges that the service issues violate the policy set forth in Title 39 of "prompt, reliable, and efficient services to patrons in all areas." Complaint at 2-3. Rate issues were not raised in the Complaint. Based on the above, the Commission concludes that the allegations made in the Complaint are service related and not rate related pursuant to § 3662.

Once a party, included in either a rate or service category, has properly brought a complaint, the Commission is given discretion on whether or not to entertain⁹ the complaint. The statute simply states: "The Commission may in its discretion hold hearings on such complaint." 39 U.S.C. § 3662. Early in its institutional history, the

⁷ The second category is restrictive, in that an interested party's complaint must be directed to a service or services it is receiving (or allegedly should be receiving), rather than some generalized complaint about postal service. However, the first category contains no such restriction; the only implicit qualification is that a party challenging a rate or rates have an "interest" in the subject of the complaint. Docket No. C99-1, Order No. 1239 at 10.

⁸ Parties may file and serve a written complaint with the Commission in the form and manner required by §§ 3001.9 through 3001.12. 39 C.F.R. § 3001.82.

⁹ The word "entertain" is used here as opposed to the phrase "hold hearings on" specifically in an attempt to clarify the Commission's level of discretion. Historically, the commission has interpreted the range of its discretion to include, but not be limited to, dismissing the complaint, acting on written filings alone, utilizing informal procedures, and convening formal hearings.

Commission adopted a rule to guide it in determining when to apply its discretion to hold hearings, as granted in § 3662, which states:

The Commission shall entertain only those complaints which clearly raise an issue concerning whether or not rates or services contravene the policies of the Act; thus, complaints raising a question as to whether the Postal Service has properly applied its existing rates and fees or mail classification schedule to a particular mail user or with regard to an individual, localized, or temporary service issue not on a substantially nationwide basis shall generally not be considered as properly raising a matter of policy to be considered by the Commission.

39 C.F.R. § 3001.82. This empowers the Commission to entertain complaints raising rate and service issues that contravene the policies of Title 39 and that have nationwide implications. The middle section of this portion of Section 82 specifies two categories of complaints that generally will not be considered by the Commission. The meaning of this section becomes clearer by noting that the phrase “or with regard to an individual, localized, or temporary service issue” is interpreted as an independent clause. See Docket No. C83-1, Order No. 512 at 8. Thus, the Commission generally considers that the following complaints are not a matter of policy that have nationwide implications and thus, will not be entertained: (1) whether the Postal Service has properly applied its existing rates and fees or mail classification schedule to a particular mail user, or (2) complaints with regard to an individual, localized, or temporary service issue.

The Postal Service alleges in its Motion to Dismiss that the Complainant has raised only an “individual, localized, or temporary service issue,” not an issue of nationwide relevance. Motion to Dismiss at 4. The Complainant’s Reply does not refute this allegation, but alleges that this only establishes “that the Commission may not choose to hold hearings on the Complaint; not the Complaint should be dismissed.” Reply at 3. The Complainant’s contention that the Commission does not have the authority to dismiss a complaint under § 3662 shall be addressed below. The Commission agrees with the Postal Service in that the Complaint only raises a localized service issue, which revolves around alleged Postal Service problems experienced by

the Borough of Throop. Since the Complainant does not argue this point, the Commission concludes that this Complaint is not of the type generally heard by the Commission.

The Complainant contends that Section 82 only allows the Commission the option of not holding hearings on the Complaint, not the option of dismissing the Complaint outright. Reply at 3. The Complainant relies upon the following in coming to this erroneous conclusion:

While the Commission has not used this regulation to bar absolutely any consideration of individual or localized rate and service complaints — especially where the Postal Service allegedly acted in an arbitrary, discriminatory, capricious or unreasonable manner — it has served as a basis for **declining to conduct hearings** on controversies that did not raise questions of general postal policy. [emphasis added, footnote omitted]

Docket No. C99-1, Order No. 1239 at 10, Motion to Dismiss at 3, Reply at 2-3. When used in the above context, the Commission historically has interpreted “declining to conduct hearings,” as including “declining to hear” or “declining to entertain” a complaint. Support for this conclusion is found in footnote seven of Docket No. C99-1, Order No. 1239. The footnote directs the reader to Docket No. C98-1, Order No. 1227 at 7-9, as the basis for the above passage. In Order No. 1227, the Commission noted:

even if it could be established through an evidentiary hearing that one or more Postal Service employees acted in an arbitrary, capricious, or unreasonable way to the detriment of [the Complainant], those acts are presented as an individual local problem. Complainant does not suggest that the Service acted in an unduly discriminatory manner, and its own records indicate a series of timely communications between Postal Service personnel and mailer representatives regarding the status of the [Complainant's] mailing, albeit to Complainant's dissatisfaction.

Order No. 1227 at 8. The result of the Commission analysis was an Order Dismissing Complaint. The wording of Section 82, “[t]he Commission shall **entertain** only those complaints... [emphasis added],” further supports the Commission's interpretation of the above passage. The Commission may dismiss a complaint.

The Commission employs one additional safeguard after it has determined, as in the instant case, that the Complaint does not properly raise a matter of policy to be considered by the Commission. The Commission may entertain a complaint where the Postal Service acted in an arbitrary, discriminatory, capricious or unreasonable manner. Docket No. C99-1, Order No. 1239 at 10. In the instant Complaint, the local Postal Service thought that it was following proper procedure for the assignment of a new ZIP Code. It did not initially deny the request for the ZIP Code change, but instead initiated a customer survey according to perceived policy. The local Postal Service believed that a positive response on the customer survey was all that was necessary to trigger assignment of a new ZIP Code. Postal Service headquarters denied the request for the ZIP Code change based upon an "operational benefit" to the Postal Service policy. Answer at 2. Both organizations within the Postal Service appear to have been consistently following what each thought was proper operational procedure.

Were the Commission to entertain this complaint, the final section of § 3662 that follows would be applicable:

If a matter not covered by subchapter II of this chapter is involved, and the Commission after hearing finds the complaint to be justified, it shall render a public report thereon to the Postal Service which shall take such action as it deems appropriate.

39 U.S.C. § 3662. This statement applies to all § 3662 issues that are not Permanent Rate and Classes of Mail related. It directs the Commission to hold hearings of an unspecified degree of formality. See 39 C.F.R. § 3001.85-86. Section 3662 acts to limit the authority of the Commission to rendering a public report to the Postal Service on its findings. Further, it allows the Postal Service the discretion to take such action as it deems appropriate on the findings concluded in the public report. The effect of this on the instant Complainant is that the Commission has no direct authority over operational aspects of postal management. See Docket No. C99-3, Order No. 1254 at 9.

However, this does not bar the Commission from hearing a complaint, nor should one infer that it is futile to lodge a complaint with the Commission. The importance of

lodging a complaint is to bring to light an unresolved issue that a Postal Service customer considers relevant and important. Although the Commission is selective in the issues that it chooses to hear, the Commission may convene a hearing and generate a public report on any issue that meets the criteria of Section 3662. The hearing provides a forum for resolving issues, either formally, or informally. The public report issued by the Commission also has an impact on the Postal Service. It formally presents the issue to the Postal Service and to other parties that may have an interest in the operation of the Postal Service. The report provides the Postal Service with an independent appraisal of the issue. It also may provide a suggested corrective action, if necessary, or agree with the Postal Service that its actions under the circumstances were appropriate.

The instant Complaint generally requests the Commission to review an operational matter of the Postal Service concerning the allocation of ZIP Codes and ZIP Code boundaries. The Commission has previously stated that "the alteration of ZIP Code boundaries is clearly an operational matter within the exclusive jurisdiction of Postal Service management, in compliance with the policies set forth in Title 39." Docket No. C99-3, Order No.1254 at 9-10. The Complaint and Answer establish that the Postal Service was implementing existing policy, and not acting capriciously by imposing an arbitrary or unreasonable standard. While the Commission finds no allegation that indicates it should hear the instant Complaint, it is concerned that existing policy is not easy for citizens to understand nor necessarily applied consistently from region to region throughout the United States.

The Commission finds that it would be neither efficient nor effective to proceed with a formal Complaint hearing for the sole purpose of developing evidence on the extent that postal employees are improperly trained regarding applicable policies governing the adjustment of ZIP Code boundaries, or postal customers are incorrectly informed about such policies and procedures. The Complainant should not be called upon to expend resources to prosecute such an inquiry, and such a review can be done

better outside of a formal hearing process. Therefore, the Commission will dismiss this formal complaint, but simultaneously send a letter to responsible Postal Service senior management officials that calls on the Postal Service to review and improve, if necessary, its policies and procedures in this area, and the dissemination of information about them.

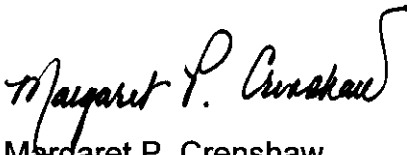
Dismissing this Complaint does not mean that the Commission is unconcerned by the inaccurate statements disseminated by the local Postal Service officials to customers within Throop as to the proper procedures and requirements necessary to effect changes in a ZIP Code. The Postal Service has a responsibility to develop and maintain fair, transparent, and nationally uniform procedures and requirements, as well as to provide its customers with accurate information on proper Postal Service procedures and requirements. To do otherwise may lead to inequities and/or to a negative customer perception of the Postal Service. While the effect of a limited number of Postal Service employees disseminating inaccurate information, as in this case, does not raise an issue of regional or nationwide scope, it is an issue of extreme importance to the local customer. The Postal Service should have systems in place to assure that local officials are fully knowledgeable of the standards with regard to ZIP Codes and that they are consistently applied when reviewing requests to establish new ZIP Codes.

Conclusion. Based upon the above analysis, the Commission concludes that Complainants have failed to present an issue appropriate for Commission action under 39 U.S.C. § 3662, as implemented by Commission regulations. Therefore, the Complaint is dismissed.

It is ordered:

The Motion of the United States Postal Service to dismiss the Complaint of Borough of Throop filed July 19, 1999, is granted.

By the Commission.
(S E A L)


Margaret P. Crenshaw
Secretary