

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

Before Commissioners:

Ruth Y. Goldway, Chairman;
Tony L. Hammond, Vice Chairman;
Mark Acton;
Dan G. Blair; and
Nanci E. Langley

Crescent Lake Post Office
Crescent Lake, Oregon

Docket No. A2010-4

ORDER DISMISSING APPEAL

(Issued July 8, 2010)

I. INTRODUCTION AND SUMMARY

On March 12, 2010, Carol Goevelinger (Petitioner), on behalf of the Crescent Lake Community Action Team (CLCAT), petitioned the Commission seeking review of the Postal Service's determination to close the Crescent Lake, OR post office. The Commission established Docket No. A2010-4 and a procedural schedule for consideration of this case in Order No. 428.¹ On March 29, 2010, a United States Postal Service Notice of Filing provided the Final Determination to Close the Suspended Crescent Lake, OR Post Office and Continue to Provide a Nonpersonnel Unit (Final

¹ Notice and Order Accepting Appeal and Establishing Procedural Schedule, March 24, 2010 (Order No. 428).

Determination).² The Petitioner filed a Participant Statement on March 30, 2010.³ Subsequently, the Postal Service moved to dismiss the appeal, contending that the Commission lacks subject matter jurisdiction.⁴ The Commission grants the Postal Service's Motion as the appeal is not timely.

II. BACKGROUND

Crescent Lake is a rural community located in Klamath County, Oregon. The nearest community with a post office is Crescent, Oregon, located approximately 17 miles away. Motion at 2.

On December 6, 2005, the store which housed the Crescent Lake post office was destroyed by a fire. *Id.* The Postal Service indicates that no alternate quarters were available and service was suspended on December 6, 2005. Final Determination at 1. Prior to the suspension, the Crescent Lake post office provided over-the-counter postal services for 7-1/2 hours per day on Monday through Friday, and 1-1/2 hours on Saturday to 136 post office box customers and 1 general delivery customer. *Id.*; see *also* Motion at 2. Following the suspension of the Crescent Lake post office, retail and delivery services have been provided by highway contract route delivery emanating from the Crescent post office. Final Determination at 1. In addition, on April 1, 2007, a nonpersonnel unit (NPU) was established in Crescent Lake to accommodate customers wanting access to post office box service. *Id.* The Postal Service has decided to retain the NPU making it the primary point of service for the Crescent Lake community.

On March 7, 2008, questionnaires seeking public input on the possible discontinuance of service were distributed to delivery customers and made available over-the-counter for customers at the Crescent post office. *Id.* Thirty-eight questionnaires were returned; three were favorable, 25 were unfavorable, and 10

² United States Postal Service Notice of Filing, March 29, 2010 (Notice).

³ Petitioner's Participant Statement, March 30, 2010 (Participant Statement).

⁴ Motion of United States Postal Service to Dismiss Proceedings, May 6, 2010 (Motion).

expressed no opinion regarding the proposed alternate service. *Id.* The concerns raised by the customers who returned their questionnaires are addressed in the Final Determination.

The proposal to close the Crescent Lake post office was posted with an invitation for public comment at the Crescent, Oregon post office from July 21 through September 19, 2008. The Postal Service indicates that no comments were received. A copy of the Final Determination to close the Crescent Lake post office was posted at the Crescent post office from February 2 through March 5, 2009. Motion to Dismiss at 1-3.

III. PARTICIPANT PLEADINGS

Petitioner Statement. The Petitioner contends that the Postal Service has failed to follow the requirements of 39 U.S.C. 404(d) and has not worked with the Crescent Lake community to reach an equitable arrangement. Participant Statement at 4. The Petitioner provides a chronology of events following the December 2005 fire and asserts that the community first became aware of the determination to discontinue service in February 2010.⁵

The Petitioner states that a Postal Service representative informed the community that postal patrons would be notified if actions were taken to close the Crescent Lake post office. *Id.* at 4. The Petitioner contends that the community was not kept abreast of the status of both the Crescent Lake post office and ZIP Code. *Id.*

The Petitioner also cites three pieces of correspondence between Chief Tim Cramblit, Central Cascades Fire and EMS, and Kim Anderson, Postal Service District Manager, Portland District. The first letter, dated January 20, 2010, informs Chief Cramblit that a letter was sent to all postal customers informing them of the option to receive curbside delivery by changing their ZIP Code from 97425 to 97733 or to continue receiving Post Office Box Service. *Id.* at 4, 8. The Petitioner claims to never

⁵ *Id.* at 5-6. Petitioner indicates that she first reviewed the Final Determination on February 19, 2010.

have received this letter. *Id.* The second piece of correspondence, dated January 26, 2010, informs Chief Cramblit that the Postal Service is currently reviewing all possible options available that would meet the community's needs. *Id.* at 5. The third letter, dated February 12, 2010, proposes a meeting to discuss possible accommodations for the Crescent Lake community. *Id.* The Petitioner contends that the Postal Service's failure to mention in each letter that the Crescent Lake post office had been closed as of 2009 creates the impression that the decision to close the Crescent Lake post office had not yet been made. *Id.* at 7.

The Petitioner also argues that changing the Crescent Lake ZIP Code to that of Crescent 97733 has had negative implications for the community. The Petitioner states that mail has been returned, misplaced and misdirected since the ZIP Code was changed. *Id.* at 8. Petitioner adds that Emergency Responders have encountered difficulties responding to residents in need of their assistance due to the similarities in two town's names and now the ZIP Code. *Id.* at 9.

Postal Service Motion. The Postal Service argues that the appeal should be dismissed because it was not filed within 30 days of making the Final Determination public. Motion at 4. Citing case law, the Postal Service states that the 30-day time limit is jurisdictional and not merely procedural and, as a limited waiver of sovereign immunity, is to be strictly construed. *Id.* at 4-5.

The Postal Service maintains that on July 21, 2008, postal officials posted at the Crescent post office a proposal to close the Crescent Lake post office inviting comments. *Id.* at 2. The Postal Service adds that no comments were received from the public. *Id.* at 3. The Postal Service states that postal officials posted a Final Determination to close the Crescent Lake post office at the Crescent Post Office from February 2 through March 5, 2009. *Id.* The post office was officially discontinued the first Saturday, 90 days after the Final Determination was posted. *Id.*

NAPUS Response. The National Association of Postmasters of the United States (NAPUS) filed a response opposing the motion to dismiss.⁶ NAPUS argues that posting the Final Determination at the Crescent post office was disingenuous and does not constitute the notification envisioned by section 404(d). *Id.* at 2. NAPUS argues that the Final Determination was posted 18 or 29 miles from Crescent Lake during the winter season. *Id.* NAPUS maintains that traveling to the Crescent post office may not have been safe during the winter and that the Crescent Lake community could not have been expected to respond to the posting. *Id.*

Tim Cramblit. Tim Cramblit, Chief, Central Cascades Fire & EMS, submitted comments in response to the Postal Service's Motion.⁷ Chief Cramblit argues that the appeal was timely filed because the final determination was not posted in Crescent Lake until February 17, 2010 when he posted it. *Id.* at 1. After meeting with post managers and retrieving the document he posted the Final Determination at the Crescent Lake post office. *Id.* Chief Cramblit raises safety issues and concerns he believes exist due to sharing the 97733 ZIP Code. He argues that sharing the 97733 ZIP Code with another town 17 miles away has created confusion regarding emergency services response. *Id.* at 2. Chief Cramblit states that Crescent Lake and Crescent have their own identities but due to proximity and similarity in name are regularly confused with each other. He adds that confusing the two towns was less prevalent when they each had unique ZIP Code. *Id.*

The Commission also received a letter from the Honorable Greg Walden, Congressman from Oregon, encouraging the Postal Service to work with the Crescent Lake community to establish a distinct ZIP Code.

⁶ Response of the National Association of Postmasters of the United States In Opposition to the United States Postal Service Motion to Dismiss Proceeding, May 7, 2010 (NAPUS Response).

⁷ Comments of Tim Cramblit, May 20, 2010 (Cramblit Comments).

Public Representative. The Public Representative's comments address concerns raised by the Petitioner regarding the discontinuance process.⁸ The Petitioner maintains that most residents of Crescent Lake did not receive correspondence from the Postal Service indicating the possible closure of the Crescent Lake post office. *Id.* at 6. The Public Representative discusses the inconvenience to customers caused by changing the Crescent Lake ZIP Code to that of Crescent. *Id.* The Public Representative references the Postal Service's mission statement found in its 2009 Annual Report, "Our mission is to provide reliable, affordable, universal service to all Americans." *Id.* at 8. The Public Representative calls on the Postal Service to fulfill its mission in this instance. *Id.* She states, "The disruption of the mail service coupled with the confusion raised by the similarity in the name of the locations that share the ZIP code amounts to a failure to maintain the Postal Service's mission in this economic environment." *Id.*

The Public Representative also offers recommendations that the Commission may be inclined to share with the Postal Service. The Postal Service should hold a meeting during the summer with representatives of the community along with Postal Service officials to explain its reasoning for the discontinuance and posting the proposal and determination at the Crescent post office. *Id.* at 9. In regards to the concerns raised in relation to the ZIP Code change, the Public Representative states that the Commission could recommend that the Postal Service provide a distinct ZIP Code for Crescent Lake or designate a staff person to address and coordinate the resolution of misdirected mail. *Id.* at 9-10.

⁸ Public Representative's Comments in Lieu of a Reply Brief, May 25, 2010 (Public Representative Comments). Motion of the Public Representative for Late Acceptance of Comments in Lieu of Reply Brief, May 24, 2009, and Motion for Acceptance of Public Representative's Comments in Lieu of a Reply Brief, May 25, 2010, are granted.

IV. CONTROLLING STATUTORY PROVISIONS

The Postal Service is required to “provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining.” 39 U.S.C. 101(b). Congress specified that no post office may be closed solely for operating at a deficit, *id.*, and established a statutory procedure that the Postal Service must follow prior to closing or consolidating a post office.

Under the terms of 39 U.S.C. 404(d)(1), prior to any decision as to the necessity for closing or consolidating any post office, the Postal Service must provide adequate notice so that persons served by the post office will have an opportunity to present their views. The law further requires the Postal Service to consider five enumerated factors in making a decision on whether to close a post office, the first of which is “the effect of such closing or consolidation on the community served by such post office.” Any determination of the Postal Service to close or consolidate a post office must be in writing, and no action to close the facility can be taken until 60 days after the determination is made public. 39 U.S.C. 404(d)(3) and (4). Any person served by the post office has 30 days from the date which the final determination is made available to appeal the Final Determination to the Commission. See 39 U.S.C. 404(d)(5).

These statutory provisions establish as national policy that citizens should have the opportunity to convey their concerns to the Postal Service before their local post office is closed, and most important, that the Postal Service will fairly consider those concerns prior to making a decision to close that facility.

V. COMMISSION ANALYSIS

The Petitioner is disturbed by the lack of notice provided by the Postal Service regarding the closure of the Crescent Lake post office. The Postal Service’s failure to maintain the Crescent Lake ZIP Code has caused mail to be lost and misdirected thus further adding to the Petitioner’s frustration. The Petitioner and NAPUS argue that posting the Final Determination at the post office did not provide the requisite statutory notice to patrons of the Crescent Lake post office. 39 U.S.C. 404(d)(5).

In its pleadings, the Postal Service details the procedural steps it followed in reaching a determination to close the Crescent Lake post office. These included distributing questionnaires regarding the possible discontinuance of service and considering the factors established in section 404(d)(2).

The issue presented by the appeal is whether the procedures followed by the Postal Service are consistent with the statutory requirements of section 404(d). Based on the record before it, the Commission concludes that under the circumstances, the Postal Service's actions satisfy the requirements of section 404(d). Consequently, the appeal must be dismissed as untimely as it was not filed within 30 days of the Final Determination's posting which occurred in February 2009. See 39 U.S.C. 404(d)(5).

Section 404(d) does not stipulate where and how the Postal Service must make the Final Determination available to persons served by the post office to be closed. Postal Service regulations require that a copy of the Final Determination must be posted in the affected post office or offices and that the date of posting must appear on the first page. See 39 CFR 241.3(g)(i). The Postal Service must also ensure that a copy of the record is available for public inspection where the Final Determination is posted for 30 days. See 39 CFR 241.3(g)(ii).

The Postal Service provides a copy of the date-stamped Final Determination to close the Crescent Lake post office indicating that the Final Determination was posted at the Crescent post office, in Crescent, Oregon, on February 2, 2009, and removed on March 5, 2010.

The Postal Service has a prescribed standard for making final determinations available to the public. A copy of the final determination must be posted in the affected post office or offices for 30 days. See 39 CFR 241.3(g). The Crescent post office would be considered the affected post office because retail and delivery services provided by highway contract route delivery emanate from that location. Additionally, it is a reasonable measure to post a copy of the Final Determination at the nearest post office when the post office to be closed is suspended. Customers of a suspended post office would be likely to visit the nearest post office in order to obtain any postal services

no longer available in their community. The procedures followed in this instance provided reasonable notice to affected patrons. In the future, to avoid potential confusion for patrons of offices subject to discontinuance, the Postal Service should consider providing direct notice to affected persons via the mail. This seemingly could be accomplished easily and at a nominal cost.

A peripheral issue to the appeal is the loss of a separate ZIP Code for Crescent Lake. Beyond the loss of a separate identity for the community, the change in ZIP Codes may have more tangible effects, *e.g.*, lost and misdirected mail, as well as safety concerns. Chief Cramblit states that the existence of two different towns with similar names and the same ZIP Code creates confusion for emergency responders and has the potential to be life threatening. Cramblit Comments at 2. The Petitioner maintains that replacing the town's ZIP Code has caused mail to be lost and misdelivered. Participant Statement at 8.

Handbook PO-101, the Post Office Discontinuance Guide, encourages postal officials overseeing closings not to change ZIP Codes unless logistically necessary to provide efficient mail services. The record indicates that the level of service may have decreased for customers of the Crescent Lake post office. The Postal Service has an obligation to remedy the safety concerns and mail delivery issues raised in this proceeding notwithstanding the fact that this appeal must be dismissed for jurisdictional reasons. The Postal Service indicates that the Crescent Lake Zip Code was recalled due to a "shortage of five digit options in the 974 three digit Zip Code." Motion at 3, n.5. The Commission recognizes that changes in ZIP Codes involve operations at a local level. Notwithstanding this, the Postal Service has an obligation to provide reliable service to the residents of Crescent Lake.

It is ordered:

The Motion of United States Postal Service to Dismiss Proceedings, filed May 6, 2010, is granted.

By the Commission.

Shoshana M. Grove
Secretary