

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

*In the Matter of:*  
Graves Mill Post Office  
Graves Mill, Virginia

Docket No. A2011-3

**OPPOSITION OF UNITED STATES POSTAL SERVICE  
TO MOTION TO COMPEL AND REVISE PROCEDURAL SCHEDULE**  
(December 23, 2010)

On December 16, 2010, the Public Representative filed a motion under 39 C.F.R. § 3001.21 to compel production of the Postal Service's administrative record and to revise the procedural schedule following such compelled filing. For the reasons stated below, the Postal Service opposes this motion.

The administrative record in this case cannot and should not be compelled because the Commission does not have jurisdiction over this matter. The Commission's rules that require the filing of an administrative record, 39 C.F.R. § 3001.113, only apply to the extent that an appeal is authorized by 39 U.S.C. § 404(d)(5). That statute provides that a final determination to close or consolidate a Post Office must be appealed within 30 days of that determination's availability. Only if this criterion has been met does the Commission have jurisdiction to process an appeal in accordance with its rules. As explained in the Postal Service's motion to dismiss, statutory time limits must be strictly construed.<sup>1</sup>

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<sup>1</sup> Motion of United States Postal Service to Dismiss Proceedings (hereinafter "USPS Motion to Dismiss"), Docket No. A2011-3, December 7, 2010, at 4-5.

While it may be said that the Commission requires a record to perform its duties,<sup>2</sup> the Commission has no duties that require a record if it has no jurisdiction.

Production and filing of an administrative record makes little practical sense when a petition is fated for dismissal. The Commission's rules should not be read to impose regulatory burdens even where basic jurisdictional facts would render such efforts moot.

Contrary to the Public Representative's assertions,<sup>3</sup> an administrative record is not necessary to rule on the Postal Service's motion to dismiss. The motion to dismiss raises issues of law, not of fact, and the factual materials already before the Commission shed ample light on any factual questions. It is undisputed that notice of the Postal Service's final determination was posted in the nearby Wolftown and Madison Post Offices more than 30 days before the petition that began this proceeding.<sup>4</sup> It is also undisputed that the Graves Mill Post Office has not been in active operation for years.<sup>5</sup> It cannot reasonably be suggested that notice should have been posted at a former facility that was not visited by postal patrons in 2010, much less that the failure to conduct such a pointless exercise is a technicality worthy or capable of tolling the Commission's jurisdiction indefinitely.

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<sup>2</sup> Public Representative Motion to Compel and Revise Procedural Schedule (hereinafter "PR Motion"), Docket No. A2011-3, December 16, 2010, at 3.

<sup>3</sup> *Id.* at 3-4.

<sup>4</sup> USPS Motion to Dismiss at 1-3 and Exhibit 1; Letter from Douglas M. Graves to Shoshana Grove, Secretary, Postal Regulatory Commission (hereinafter "Graves Petition"), Docket No. A2011-3 (posted November 22, 2010), at 2.

<sup>5</sup> Graves Petition at 2.

As the materials already filed in this proceeding make clear, local residents were informed that any services previously provided at the Graves Mill Post Office, to the extent that such services were not available via rural carrier, would be assumed by the Wolftown and Madison Post Offices.<sup>6</sup> Therefore, it is reasonable to assume that any former Graves Mill Post Office patrons in need of retail services at a classified retail unit would be visiting the Wolftown or Madison Post Offices and would be able to view the notice of the Postal Service's final determination at those locations. Contrary to the petitioner's suggestion, the Postal Service's regulations implementing 39 U.S.C. § 404(d) require only that notice be posted at affected Post Offices, not at cluster box units (CBUs). Section 404(d)(5) applies to persons served by Post Offices, not CBUs or other mail receptacles, and the Postal Service opposes any suggestion that notification should extend to CBUs as a matter of right based on a petitioner's mere perception that a given CBU fills his or others' needs with respect to a suspended Post Office. Simply put, with the suspension of the Graves Mill Post Office, no Post Office facility remained in Graves Mill at which the Postal Service was obligated to post a notice of its final determination. Therefore, the Postal Service's notice was sufficient and complied fully with applicable regulations, the petition is out of time, and the Commission does not have jurisdiction to entertain this proceeding or require the filing of an administrative record.

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<sup>6</sup> USPS Motion to Dismiss at 1 fn.1, Exhibit 1.

To the extent that the Public Representative and, separately, the petitioner<sup>7</sup> request a revised procedural schedule for the filing of the administrative record, this request is premature until the Commission's jurisdiction and, with it, any requirement of an administrative record, are resolved.<sup>8</sup> If it is ultimately determined that the Commission has subject-matter jurisdiction, then a new deadline for filing of the administrative record would doubtless be required. However, the Public Representative puts the cart before the horse in proposing that the Commission proceed as if it has jurisdiction, when that very jurisdiction is at issue in the first place.

Respectfully submitted,

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<sup>7</sup> Douglas M. Graves, Request for a New Procedural Schedule, Docket No. A2011-3, December 16, 2010.

<sup>8</sup> Yesterday, the Commission issued a revised procedural schedule as to steps subsequent to filing of the administrative record. Order No. 621, Order Revising the Procedural Schedule, Docket No. A2011-3, December 22, 2010. The Postal Service takes no issue with the revised schedule, assuming that it is conditioned on Commission jurisdiction attaching at all.