

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

**Rules Applicable to Appeals of
Post Office Closing**

Docket No. RM2011-13

**AMERICAN POSTAL WORKERS UNION, AFL-CIO
COMMENTS ON PROPOSED RULES
(October 5, 2011)**

On August 18, 2011, the Commission issued Order No. 814 initiating this proceeding to consider proposed changes to the rules governing appeals of post office closings and consolidations. The Commission issued a supplemental notice of additional proposed changes on August 25, 2011. The American Postal Workers Union, AFL-CIO (APWU) submits these Comments on the proposed rule changes.

The changes proposed by the Commission are largely supported by the APWU as they simplify the process for the public by lessening the procedural barriers for filing an appeal. APWU also strongly supports the Commission's proposed definition that "post office" means "a Postal Service operated retail facility." This definition comports with the public's general understanding of the term and it eliminates needless arguments before the Commission over the applicability of Section 404(d) to station and branch closings and consolidations. Additionally, the Commission's proposal to suspend the effectiveness of the Postal Service's final determination to close or consolidate a postal retail facility until the appeal is decided is a welcome change to the existing rules.

However, as detailed below, certain of the proposed rules are problematic and warrant reconsideration by the Commission before final implementation.

Relocation Definition and Application is Too Broad

Specifically, the proposed rules would not consider the relocation of a facility within a community, as a closure that could be appealed to the Commission under any circumstances. The definitions in §3025.1 of the proposed rules define "relocate" to

mean “that the location of a post office within a community changes, but the total number of post offices within the community remains the same or increases.” Section 3025.2 of the proposed rules makes the appeal process inapplicable “when the Postal Service relocates a post office within a community.” While this rule comports with Commission rulings that it lacked jurisdiction over cases where the Postal Service was merely rearranging its retail network and not closing a post office, this rule is simply too broad.

For example, consider Docket No. A2007-1 which involved the closing of Ecorse Classified Finance Station. This station was one of approximately thirty facilities in Detroit, Michigan and the Postal Service built a new station about one and one-half miles away capable of housing both the Ecorse facility and another station. Under these facts there was a loss in the number of facilities but in reality the experience of the postal customers may not have changed. The proposed rules would permit an appeal in this instance. However, if instead of this relocation the Detroit Post Office decided to open a station on the west side of the city while closing a facility on the east side of the city, under the proposed definition this would be a mere relocation and an appeal would not be available. But the postal customers who relied upon the east side facility would experience a loss of a post office akin to a straightforward closure. As these examples make clear, some relocations, as defined by the Commission, would require more scrutiny than a simple count of the number of facilities in the area. Therefore, the proposed definition of relocate and its applicability should be revised.

A Demonstrable Interest in a Closing or Consolidation Should Not be Required to Participate in Appeals

The proposed rules would also unnecessarily restrict participation in appeals. Specifically, proposed Section 3025.14 limits participation in an appeal proceeding to “any person (1) served by a post office to be closed or consolidated, or (2) with a demonstrable interest in the closing or consolidation.” The requirement that parties have a “demonstrable interest in the closing or consolidation” in order to participate may foreclose participation by consumer organizations and advocacy groups who have an interest in post offices closings more generally, but may have an interest in issues

raised by a particular case, regardless of whether they have a demonstrable interest in whether the particular office remains open or not. For instance, while APWU has rarely intervened in an appeal of a post office closing, it has an increasing interest in doing so based on recent Commission decisions that have affirmed closure decisions despite the failure of the Postal Service to comply with all of the procedural requirements of Section 404(d). For example, in Docket No. A2011-13, the Commission acknowledged that the Postal Service did not comply with the notice requirements of Section 404(d)(4), that the information pertaining to alternative postal facilities contained in the Postal Service Final Determination was inaccurate, and that the savings presented were overestimated. However, the decision was upheld. See Order No. 766 (July 20, 2011). Likewise, the Commission affirmed the Postal Service closure decision in Docket No. A2011-15, despite noting the possibility that the final decision was effectively made before customer input was solicited; a clear violation of Section 404. See Order No. 832 (August 30, 2011). In Docket No. A2011-16, the Postal Service failed to post its Final Determination and did not make the Administrative Record available for inspection by affected customers. The Postal Service also failed to inform the affected customers of their right to appeal the decision and relied upon savings estimates unsupported by the record. Nevertheless, the Commission declined to remand the case to the Postal Service for further consideration. See Order No. 843 (September 8, 2011). Finally, in Docket No. A2011-18, the Postal Service failed to provide affected customers with their appeal rights and held a community meeting after the final decision to close the facility had been made. Despite agreeing with the Public Representative that “the procedures fell far short of what should be expected,” and that the Postal Service needed to “implement a more robust measurement of financial impact,” the Commission affirmed the Postal Service determination to close the facility. See Order No. 865 (September 20, 2011). The precedent set by these cases in permitting the Postal Service to flout the requirements of Section 404 is distressing, particularly given the unprecedented number of appeals currently pending before the Commission.

Refusing to permit organizations like the APWU and consumer organizations and advocacy groups to intervene when they recognize issues that may have broader implications increases the likelihood that harmful precedent that allows the Postal

Service to close facilities without conforming to the requirements of Section 404, will be set unnecessarily. This could compromise procedural arguments in future cases where these groups do have a direct interest in whether a particular postal facility is closed. Therefore, APWU respectfully requests the Commission reconsider the proposed requirement that parties have a “demonstrable interest” in a specific facility closure in order to participate in appeals to ensure that the Postal Service is acting in compliance with all statutory and regulatory requirements before closing or consolidating post offices.

Right to Request Oral Argument Should be Preserved

Finally, the proposed rules also would eliminate the opportunity for oral argument. While it is true that an oral argument has never been held in an appeal of a post office closing or consolidation, the wholesale elimination of the possibility in even the most unusual circumstances is not warranted. Given the recent unprecedented number of post office closings and the likelihood of even more closings in the near future, it is impossible to predict what situation may arise that may merit argument before the Commission. Therefore, APWU respectfully requests that the Commission preserve the right to seek oral argument if and when circumstances arise that make written pleadings alone insufficient.

Conclusion

For the reasons explained above, APWU respectfully requests that the Commission reconsider its proposed rules as they apply to relocations, appeal participation and oral arguments.

Respectfully submitted,

Darryl J. Anderson
Jennifer L. Wood
Counsel for American Postal Workers Union, AFL-CIO