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Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

PACE BRANCH

Docket No. A2012-50

PACE, MISSISSIPPI

INITIAL BRIEF OF PETITIONERS
ROBERT LEFLORE, SR. AND CURTISSA W. ALLEN

(January 17, 2011)

Respectfully submitted:

/s/ Aelicia L. Thomas

Post Office Box 912

Rosedale, MS 38769

(662) 843-3777

(662) 843-0305 – Fax

Email: thomaslawfirm1@bellsouth.net

*Attorney for Petitioners Robert Leflore and
Curtissa Allen*

STATEMENT OF THE CASE

On November 3, 2011, the Commission received a petition for review of the determination by the Postal Service to close the Pace Branch in Pace, Mississippi. Another petition was received by the Commission on November 7, 2011. The first petitioner is Robert Leflore, Sr., Mayor of the City of Pace. The second petitioner is Curtissa Allen, Clerk for the City of Pace. In Order No. 979, issued on November 18, 2011, the Commission instituted a proceeding under 39 U.S.C. § 404(d)(5) and established Docket No. A2012-50 to consider petitioner's appeal.

On December 2, 2011, the Postal Service filed the Administrative Record. Also on November 4, 2011, petitioner Chad Deutsch filed a motion for an extension of time until November 21, 2011, to file the Initial Brief.

PERTINENT STATUTORY AUTHORITY

The applicable statute is 39 U.S.C. § 404(d). The Commission has explained that, under 39 U.S.C. § 404(d), the Postal Service must provide notice prior to making a determination to close any post office. Notice of its intent to close is required at least 60 days before the proposed closure date to ensure that patrons have an opportunity to present their views regarding the closing. If the Postal Service decides to close the post office, it must make its Final Determination available to the public for 30 days, allowing the patrons the opportunity to appeal the determination to the Commission. The Commission reviews the Postal Service's determination to close or

consolidate a post office “on the basis of the record before the Postal Service in the making of such determination, as required by 39 U.S.C. § 404(d)(5). The Postal Service shall take no action to close or consolidate a post office until 60 days after its written determination is made available to persons served by such office. See 39 U.S.C. § 404(d)(4).

In making a determination whether or not to close a post office, the Postal Service must consider the following factors, pursuant to § 404(d)(2)(A): the effect on the community; the effect on postal employees; whether a maximum degree of effective and regular postal service will be provided; the economic savings to the Postal Service; and any other factors the Postal Service deems necessary.

The provisions in § 404(b), now codified as § 404(d), were found to apply to closings and consolidations and not to the transfer of sorting activities. A major distinction was that postal customers would not be affected by the transfers. In light of the continuation of all postal services rendered to the public, the public would not know where the bulk mail sorting operations occurred. *Knapp v. United States Postal Service*, 449 F.Supp. 158, 162 (E.D.Mi. 1978). Thus, the important policy considerations of 39 U.S.C. § 404(d) are based on the effect of closings and consolidations on the postal customers.

The Commission shall set aside any determination, findings, or conclusions found to be (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (B) without observance of procedure required by law; or (C)

unsupported by substantial evidence on the record. The Commission may affirm the determination of the Postal Service or order that the entire matter be returned for further consideration. *See* 39 U.S.C. § 404(d)(5).

FACTUAL BACKGROUND

City of Pace

Pace is an incorporated community located in Bolivar County. The community is administered politically by the Town of Pace through its Mayor and City Alderman form of government. Police protection is provided by the Pace Police Department and Fire protection is provided for the citizens by its Volunteer Fire Department. In addition, Pace has several small businesses located within its city limits: Dudley Discount Store, Puddin's Place, Lem King Company, The Brass Rail, MS Housing Pace Apartment Homes, South Development Gourlay Place Apartments, Robert Johnson and Walter Johnson – Carpentry/Electrical/ Plumbing, Towers Tees and Signs, Kevin Towers TNT/Auto Detailing Shop, Pace Junktiques, Elite Daycare Services, Simple Connection Services, and Plez Fast Foods/Mobile Services.

The racial makeup of the town is approximately 13.74% White, 82.69% African American, 1.10% Native American, 1.65% Asian, and 0.82% from two or more races; and, Hispanic or Latino are approximately 1.37% of the population. (See Wikipedia). Although the population of Pace, Mississippi is small, the needs of the community are great and the USPS serves many of those needs.

ARGUMENT

Failure to consider the effect of closing the Pace Post Office on the community

The USPS has a legal obligation to consider the effect of closing a post office upon the community served by the post office. Petitioners feel that the record is clear that the USPS failed to meet this important and critical obligation.

a. Failure to consider surrounding communities affected by the closure

Petitioners maintain that the USPS did not truly consider the comments made by the citizens of Pace concerning the real and negative effect this closing will have on the Pace community. First, the USPS failed to consider and to include within the record that the Pace Post Office services more than just the town of Pace. There is an adjoining community, Symonds, MS, which is approximately 4 miles from Pace. Many of the citizens of this unincorporated community use the postal service that is located in Pace. Malvina, MS is another unincorporated community, which is approximately 7 miles from Pace and many of the citizens of this community also take advantage of the postal services offered in Pace. (See Wikipedia).

The USPS' Final Determination Letter fails to state how many of the 308 post office boxes at the Pace Post Office are being utilized by the citizens of these surrounding communities. The impact of the closure on these communities were not taken into consideration and therefore, any recommendation to close the Pace Post Office is clearly arbitrary and capricious and clearly an abuse of discretion. There is

no legal way that the USPS recommendation for closure can be accurate because it failed to include the “true community” that is dependent upon the Pace Post Office.

b. Failure to consider the impact the closure will have on race relations for the Pace Community

The issue of race in Mississippi is engrained in the crevasses of its creation. It is and still continues to be a part of Mississippi. Pace, MS is no exception.

Nonetheless, Pace post office serves as a neutral safe haven for citizens to gather and converse. The post office is an institution in Pace. Often, the post office is the only place and opportunity where race relations are practiced successfully. The races are able to meet and greet each other and converse with one another. With race issues already being a difficult bridge to cross to take away the only place the people have in the community to come is removing the bridge altogether. The post office is the binding agent that keeps the community together.

In small towns, there are not many places where the races are able to meet and engage in communal discussions. We know that churches are the most segregated institutions in American, but especially in small rural communities. Although Pace does have several businesses, there are only a few that allows for this type of racial interaction. In addition, where one may only go to the grocery store once a week, one is going to go to the post office at least twice a week. For our older citizens, they normally check their mail boxes at least three to four times a week. This frequency allows for greater opportunity for the races to meet and become more and more

familiar with each other which strengthens the community as a whole. This impact on the community must be considered and addressed. The ability to have racial harmony within your community is priceless.

c. Failure to consider the impact closure will have on businesses

The record is void as to whether the USPS considered the impact closure of the post office will have on the businesses located within the city limits of Pace. The loss of a continuous address will most assuredly be a problem for businesses.

Businesses will be forced to incur significant expense in redoing business stationary to include a new address. In addition, businesses and civic organizations and individuals will lose the ability to send out bulky materials, mass mailings, etc. from a local facility. This too will bring about an additional expense for the citizens and businesses. Now, they will have to exert additional time by having to travel as far as 20-25 miles (round trip) to a facility. This travel will cause additional expense for gas and it will add wear and tear to automobiles.

Rural route delivery is not an adequate alternative especially for businesses that rely upon a secure place to receive mail or for individuals who may receive perishable materials, especially those receiving medication through the mail. The USPS response to these concerns is both cavalier and not based on sound reasoning.

d. Failure to consider the economic cost to the community

There is one particular issue that may not be as much a problem with businesses, but it will definitely affect the regular citizens. The issue of security with

mail route boxes. The record is clear that the USPS did not truly consider this impact. Petitioners believe that the USPS is unable to contradict that a “locked” mailbox is not secure if it is located on a lonely and deserted country road. Further, the USPS states that “The Postal Service does not open mailboxes which are locked and does not accept keys for this purpose”. (See Final Determination). But if this is the case, there is no way the citizens will be able to take advantage of this questionable “security”. If a resident has his/her box locked and is unable to be at home when the mail is being delivered to unlock the mailbox, how will the resident be able to receive new mail? Many residents commute to work and school. This situation would be more than an inconvenience; it will place those residents at a disadvantage and hinder their ability to receive mail without disruption.

If the Pace Post Office closes, the 308 existing box holders will need to make alternative arrangements for mail delivery. If box holders rent boxes at the nearest available post office (which will most likely be Cleveland, MS which is 20-25 miles away), there will be no significant costs to the USPS, but Pace will greatly feel the impact: both economic and non-economic.

The most significant impact overlooked by the USPS will be the economic and environmental impact upon the community that will result from the need to travel. Of the 500 plus customers from the Pace and surrounding area at least a 100 will go into Cleveland at least once a week for mail purposes. This travel time will be costly. Twenty-five (25) miles times 100 people equals 2,500 miles per week, multiply that by

52 weeks per year equals 130,000 miles. You can estimate that about 6,500 gallons of gas will be used. Multiply that by approximately \$3.50 per gallon equals approximately \$22,750 of additional expense being placed on the people of these communities. When calculating this cost, plus the rural mail carrier's added salary and benefits, operating costs, gasoline, oil, customer mail boxes, etc. you can easily see that it is more economical to keep the Pace Post Office open.

The record is clear that the USPS has not considered the additional cost for replacing mailboxes. Because Pace is a small community, the social and physical outlets that youths need to attract their attention is limited and to some degree obsolete. Consequently, youths have a tendency to become creative developing their entertainment. Unfortunately, what youth believe to be fun usually turns out to be destructive. Petitioners are convinced that many youths will find fun in knocking the mailboxes down. This will certainly create an additional expense for the USPS and a loss of confidence among the citizens concerning the security of their mail. Or, the USPS will pass this cost on to the citizen. There again, causing additional expense on the community that it just can not afford.

Failure to demonstrate economic savings

The USPS estimates that it will realize an annual savings of \$52,479 as a result of the closure of the Pace Post Office. This estimation is based upon the claim that the USPS will save salary and fringe benefits totaling \$44,279 and the lease cost of \$8,200. However, the analysis of the USPS is incomplete and questionable.

The USPS also fails to include the loss of revenue from the rental of post office boxes that are rented. There is nothing in the record indicating how many boxes of each size: small boxes - \$42, medium boxes - \$56, and large boxes - \$100 per box are currently being rented to determine the actual revenue of the Pace Post Office. Even assuming that only small boxes are rented, this annual revenue of at least $(308 \times \$42) = \$12,936$, which will be lost as a result of the closing, and should be subtracted from the alleged \$52,479 savings.

a. Costs avoided by closure of the Pace Post Office

The services that are rendered to the public at the Pace Post Office would otherwise have to be rendered at some other location by another postal employee, and the wages associated with that employee's time at that other location should properly have been considered. Therefore, not all of the wages and fringe benefits that are allocated to the closing of the post office should properly have been included in the total amount of cost savings.

Furthermore, there are additional services rendered at the Pace Post Office that will need to be replaced. As an example, the OIC or Postmaster is responsible for sorting the incoming mail and for other incidental services associated with the collection of the mail to be dispatched. Again, these services will need to be duplicated in some other fashion; either by some presorting of mail prior to its delivery to a rural carrier, and by the collecting of mail for dispatch. Simply put, there

are services rendered by the OIC that will still need to be performed. The costs of these services need to be included.

The USPS has an obligation to consider the impact of the closing on employees. This analysis, if performed, might indicate that the alleged savings of salary and fringe benefits are illusory. The Final Determination simply states “the non career postmaster relief (PMR) **may** be separated from the postal service” (See Final Determination). Since we do not know whether this employee, or any employee, may be separated, and the actual savings realized by such separation, we cannot definitely say that salary and fringe benefits will be saved.

b. Cost of replacement services

The USPS has not fairly considered the total replacement costs. According to the USPS, the Cleveland Post Office has 140 post office boxes available and the Beulah Post Office has 27 available boxes. (See Final Determination). However, the USPS has failed to consider the congestion at these two alternate offices in having to deal with the additional needed services. This additional flow of services will no doubt cause the need for additional assistance to be provided by the USPS. This cost should be included in the cost analysis. Additionally, there is a real possibility that an additional employee may need to be added to the office located in Beulah or the great possibility that additional boxes will need to be added to the Beulah office. These potential costs should be included in the cost analysis.

Failure to identify other factors

The USPS has not offered any reason for the closure of the Pace Post Office other than the alleged cost savings. Indeed, the Postal Service states that it has identified no other factors for consideration.

The USPS has failed to consider the statutory factors listed in § 404 (d) (2)

39 U.S.C. § 404 (d) (2) requires the USPS to consider five factors including: 1) the effect of such closing or consolidation on the community served by such post office, and 3) whether such closing or consolidation is consistent with the policy of the government, stated in 39 U.S.C. § 101 (b), “the Postal Service shall provide a maximum degree of effective and regular postal services to rural areas communities and small towns where post offices are not self-sustaining, and for the economic savings to the Postal Service resulting from such closing or consolidation.” The USPS has failed to meet its obligation with respect to these two factors. In addition, even though the USPS has considered the fourth factor, economic savings, it has done so in an arbitrary and capricious manner, and the alleged economic savings are not sufficient to outweigh the record evidence indicating that the first and third factors strongly militate against the closing of the post office.

a. The failure to consider the effect of the closing upon the community

As stated above, there is strong evidence in the record that the closing of the Pace Post Office will have a serious adverse impact upon the community. Businesses will suffer from a great amount of additional expense and may even need to relocate

to continue to operate, individuals relying on the security of post office boxes for delivery of medication will suffer, and the entire community will incur significant travel expense, with concomitant impacts on energy use, the environment, and public safety. Most important for Pace and the surrounding communities is the opportunity to continue building race relations with the citizens. These are issues which the USPS has simply failed to consider, in derogation of its legal responsibilities under § 404 (d)(2)(A)(1).

Post Offices have significant value, not only economically, but also socially. Here, the USPS simply did not consider the impacts of the closure of the Pace Post Office. To have fairly considered these impacts, the USPS had to consider the broader social impacts as well as the mere economic issues; instead, it did not consider either.

Petitioners respectfully maintain that, had the impacts been fairly considered, the USPS would not have reached the conclusion that it did. The conclusion of the USPS to close the post office is not supported by substantial evidence in the record, because the record evidence indicates that adverse impacts will occur and, in any event, the decision is arbitrary and capricious because of the failure to even consider the relevant evidence.

b. Governmental policy in support of post offices in rural areas and small towns

39 U.S.C. § 101 (b) states “the Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining. No small post office shall be closed solely for operating at a deficit, it being the specific intent of the Congress that effective Postal Service is to be ensured to residents of both urban and rural communities.”

Pace is an economically active area, which is home to more than 300 residents who live in close proximity to the post office. There are approximately 200 box holders, including a significant number of businesses and civic organizations who rely upon the post office. The clear policy and legislative intention of the Congress of the United States is to ensure that such communities continue to receive effective Postal Services, even if they cannot be delivered on an economical basis. This intention is also specifically referenced in § 404 (d)(2)(A)(iii) which requires the USPS to consider whether a proposed closing is consistent with the policy of the government set forth in § 101 (b).

In other cases, the USPS has attempted to avoid the prohibition against closing post offices that are allegedly not “self-sustaining” by arguing that a purely economic determination includes other factors. For example, the USPS has argued the minimal workload, declining office revenue, a postmaster vacancy and the alleged availability of other delivery and retail options are factors separate and apart from the operating

deficit of a post office. Petitioners respectfully maintain that this is a false distinction; a post office that, like Pace, is allegedly operating at a deficit, necessarily will have a declining office revenue and lower workload. To close a post office for such reasons is to close a post office solely because it is not self-sustaining, and is expressly prohibited by 39 USC § 101 (b) and §(d) (4).

Conclusion

The determination to close the Pace Post Office because of the alleged economic savings without any other justification is arbitrary and capricious, and completely unsupported by any evidence in the record. This determination should be reversed by the Postal Regulatory Commission.

SO PETITIONED, the 17th day of January, 2012.

Respectfully submitted,

By: /s/ Alicia L. Thomas
AELICIA L. THOMS
Post Office Box 912
Rosedale, MS 38769
(662) 843-3777 – Office
(662) 843-0305 – Fax
E-mail: thomaslawfirm1@bellsouth.net