



U.S. POSTAL REGULATORY COMMISSION

Washington, DC 20268-0001

July 19, 2013

Office of the Secretary

Victoria Lova
1700 Scott Road
Burbank, CA 91504

Re: Appeal of the Postal Service's Determination to Close Glenoaks Station,
Burbank, California

Dear Ms. Lova:

The Postal Regulatory Commission received your appeal, as well as others, regarding the Postal Service's determination to close Glenoaks Station in Burbank, California. The appeals have been assigned Docket No. A2013-5. The Commission's Notice and Order initiating the docket is enclosed.

Also enclosed are the Postal Service's motion to dismiss the proceeding which was filed on July 15, 2013, and an errata to it which was filed July 18, 2013. Under the Commission's rules, you may submit an answer to the motion. Your answer, if any, is due July 29, 2013.

A copy of Commission Form 61 is also enclosed. You may complete Form 61 or file a brief to provide the Commission with arguments to support your appeal. See 39 C.F.R. § 3025.40. The deadline for submission of your arguments is August 5, 2013. Other deadlines are set out in the Notice and Order accepting your appeal.

If you have questions, do not hesitate to call the Public Representative named in the Notice and Order. The telephone numbers and e-mail addresses of Public Representatives are posted on the Commission's website, www.prc.gov. You may also call the Commission's docket section (202-789-6847) to obtain contact information for the Public Representative assigned to your appeal. Please keep in mind that the Public Representative represents the interests of the general public and may not necessarily support all of your arguments.

Sincerely,

A handwritten signature in blue ink, appearing to read "Shoshana M. Grove".

Shoshana M. Grove
Secretary

Enclosures

**PLEASE READ THESE INSTRUCTIONS ENTIRELY
BEFORE FILLING OUT THE ENCLOSED
PARTICIPANT STATEMENT**

**APPEALS OF POSTAL SERVICE DETERMINATIONS
TO CLOSE OR CONSOLIDATE POST OFFICES**

INTRODUCTION

Congress requires the Postal Service to follow specific procedures and to consider certain factors before making a Final Determination to close or consolidate a post office. When a patron appeals a Final Determination, the Postal Regulatory Commission (Commission) must decide whether the Postal Service's closure or consolidation of a post office is consistent with the law. **The Commission may not change the Postal Service's Final Determination.** It may only (1) affirm the determination, or (2) remand the entire matter to the Postal Service for further consideration.

You may assist the Commission in its consideration of your appeal by sending a written statement explaining why you believe that the Postal Service has not complied with the law. Enclosed please find a Participant Statement form, which you may use to present your written argument. The purpose of the Participant Statement is the same as a formal brief, which is to point out issues that you believe the Commission should consider in its review of the Postal Service's actions. You may also identify items in the Administrative Record that support your position. You are not required to use this form. You may file a Participant Statement as well as a formal brief.

REASONS FOR REMANDING A FINAL DETERMINATION

The Commission may remand a Final Determination if the Postal Service (1) fails to follow proper procedure, or (2) fails to provide a written record of its actions that is adequate to support its decision. The legal language that specifies how the Commission evaluates a Final Determination appears under the heading "Postal Regulatory Commission Authority" below. General examples of some reasons for remand would be:

1. The Postal Service did not follow the procedure required by law;
2. The Postal Service did not adequately consider certain issues it is required to consider;
3. The facts relied on by the Postal Service have not been established;
4. The facts in the Postal Service's Final Determination are true, but they do not prove what the Postal Service says they prove; or
5. The Final Determination does not resolve conflicts in the Administrative Record.

REVIEWING THE ADMINISTRATIVE RECORD

When investigating a post office for possible closing or consolidation, the Postal Service keeps a record of all the actions it takes (such as soliciting comments or holding a community meeting) and all the facts it considers in reaching a decision on whether to close or consolidate the post office. This record is called the Administrative Record. The Administrative Record also contains the Proposal, the Final Determination, and other documents the Postal Service collects during its investigation. **You should review the Administrative Record before preparing your Participant Statement,** and you should provide references to it to support the arguments and assertions in your Participant Statement.

When considering appeals of Final Determinations to close or consolidate post offices, the Commission is limited to "appellate jurisdiction." As a result, the Commission cannot conduct its own fact-finding investigation and must consider appeals based solely upon the Administrative Record. **Postal Service regulations require that a copy of the Administrative Record be available at affected post offices (i.e., wherever the Final Determination is posted) for 30 days after the Final Determination is first posted.** If an appeal is filed, the Administrative Record remains available at the affected post offices, and **all documents filed with the Commission relating to the appeal will be posted at the affected post offices.** Affected post offices include the post office to be closed or consolidated, the proposed supervising post office, and any post office likely to serve a significant number of customers of the post office to be closed or consolidated.

AUTHORITY OF THE POSTAL SERVICE

In keeping with its responsibility to operate the nation's mail system, the Postal Service has been given considerable authority over the operations of post offices. This authority includes the power to decide whether a post office should be closed or consolidated. However, before reaching a decision to close or consolidate a post office, the Postal Service must follow a procedure set up by law, and it must take account of certain specific effects of such an action.

PROCEDURE

The law sets out steps the Postal Service must take before it closes or consolidates a post office. Prior to making a determination as to the necessity of closing or consolidating any post office, the Postal Service must provide adequate notice of its intention to close or consolidate the post office. Notice must be given at least 60 days prior to the proposed date of closing or consolidation to persons served by the post office. This is to insure that such persons have an opportunity to present their views. The Postal Service calls the "notice of its intention to close or consolidate" the "Proposal." During the 60 days, patrons are invited to give the Postal Service their comments on the proposed closing or consolidation.

The Postal Service calls its decision to close or consolidate a post office the "Final Determination." Any Final Determination of the Postal Service to close or consolidate a post office must be in writing and must include the findings of the Postal Service with respect to certain specific factors. The Final Determination and findings must be made available to persons served by the post office. The Postal Service may not close or consolidate a post office until 60 days after its written Final Determination is made available to persons served by the post office.

FACTORS TO BE CONSIDERED

In addition to following the required procedure, the Postal Service must also consider certain factors. The Postal Service must consider:

- (A) the effect of the closing or consolidation on the community served by that post office;
- (B) the effect of the closing or consolidation on employees of the Postal Service employed at that office;
- (C) whether the closing or consolidation is consistent with the policy of the Government that 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;
- (D) the economic savings to the Postal Service resulting from the closing or consolidation; and
- (E) such other factors as the Postal Service determines are necessary.

POSTAL REGULATORY COMMISSION AUTHORITY

Limitations on the Commission's authority prohibit it from remanding a Final Determination to the Postal Service simply because the Commission believes a different result might be better. Rather, the Commission may only examine the Postal Service's decision and record in order to determine whether the Postal Service abided by statutory guidelines. Specifically, the law requires that the Commission affirm the Postal Service's Final Determination unless the determination is:

- (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.

PARTICIPANT STATEMENT

We have included a form that you may use for your written argument.

The Participant Statement should be as specific as possible.

Commission proceedings to review Postal Service Final Determinations to close or consolidate post offices can be much less formal than is customary in courts. The Commission does not require patrons appealing Postal Service decisions to meet the usual format requirements for filed documents. However, it is important that papers sent to the Postal Regulatory Commission be legible. It is also important for statements to be clear and as specific as possible.

The due date for a Participant Statement or brief can be found in the schedule which is attached as an Appendix to the "Notice and Order of Filing of Appeal." You should have a copy of the Notice and Order. If you do not, you should be able to find a copy posted at the post office.

Briefs and Participant Statements may be filed electronically, using the Filing Online function on the Commission's website, *www.prc.gov*, or by mail. Under its rules, the Commission expects to receive briefs on or before the day specified in the schedule, rather than receiving briefs that are simply postmarked by that day.

Address the Participant Statement or brief to:

Office of the Secretary
Postal Regulatory Commission
901 New York Avenue, NW, Suite 200
Washington, DC 20268

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268

In the Matter of

Docket No.: _____

Post Office State ZIP Code

_____ Petitioner(s)

PARTICIPANT STATEMENT

1. Petitioner(s) are appealing the Postal Service's Final Determination concerning the _____ post office. The Final Determination was posted _____ (date).

2. In accordance with applicable law, 39 U.S.C. § 404(d)(5), the Petitioner(s) request the Postal Regulatory Commission to review the Postal Service's Final Determination on the basis of the Administrative Record before the Postal Service in the making of the Final Determination.

3. Petitioners: Please set out below the reasons why you believe the Postal Service's Final Determination should be reversed and returned to the Postal Service for further consideration. (See pages 1 and 3 of the Instructions for an outline of the kinds of reasons the law requires us to consider.) Please be as specific as possible. Please continue on additional paper if you need more space and attach the additional page(s) to this form.

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

Before Commissioners:

Ruth Y. Goldway, Chairman;
Robert G. Taub, Vice Chairman;
Mark Acton;
Tony Hammond; and
Nanci E. Langley

Glenoaks Station Post Office
Burbank, California

Docket No. A2013-5

NOTICE AND ORDER ACCEPTING APPEAL AND
ESTABLISHING PROCEDURAL SCHEDULE

(Issued July 5, 2013)

Notice is hereby given that, on July 3, 2013, the Commission posted five Petitions for Review (Petitions) of the Postal Service's closure of the Glenoaks Station in Burbank, California.¹ The Petitions were filed by: Charlotte E. Coston, Linda Ly, Anna May Nelson, Sharon Wright, and Sharyn Engel (Petitioners). The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket

¹ See Petition for Review Received from Charlotte E. Coston Regarding the Glenoaks Station Post Office, Burbank, CA 91504, July 3, 2013; Petition for Review Received from Linda Ly Regarding the Glenoaks Station Post Office, Burbank, CA 91504, July 3, 2013; Petition for Review Received from Anna May Nelson Regarding the Glenoaks Station Post Office, Burbank, CA 91504, July 3, 2013; Petition for Review Received from Sharon Wright Regarding the Glenoaks Station Post Office, Burbank, CA 91504, July 3, 2013; Petition for Review Received from Sharyn Engel Regarding the Glenoaks Station Post Office, Burbank, CA 91504, July 3, 2013.

No. A2013-5 to consider Petitioners' appeals. Petitioners may further explain each individual's position with supplemental information or facts. Petitioners may file Participant Statements on PRC Form 61 or briefs with the Commission no later than August 5, 2013.

Categories of issues apparently raised. Petitioners contend that the Postal Service failed to consider the effect of the closing on the community. See 39 U.S.C. 404(d)(2)(A)(i).

After the Postal Service files the Administrative Record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable Administrative Record with the Commission is July 15, 2013. See 39 CFR 3025.21. In addition, the due date for any Postal Service pleading in response to this Notice is July 15, 2013.

Availability; website posting. The Commission has posted the appeals and supporting material on its website at <http://www.prc.gov>. Additional filings in this case and participants' submissions will also be posted on the website, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's website is available online or by contacting the Commission's webmaster via telephone at 202-789-6873 or via electronic mail at prc-webmaster@prc.gov.

The appeals and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8:00 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at prc-dockets@prc.gov or via telephone at 202-789-6846.

Filing of documents. All Postal Service filings in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a). See 39 CFR 3001.9(a) and 3001.10(a). Other participants may also use Filing Online. Instructions for obtaining an account to file documents online may be obtained on the Commission's

website, <http://www.prc.gov>, or by contacting the Commission's docket section at prc-dockets@prc.gov or via telephone at 202-789-6846.

The Commission reserves the right to redact personal information that may infringe on an individual's privacy rights from documents filed in this proceeding.

Participation by others. Persons other than Petitioners and the Postal Service wishing to be heard in this matter may submit comments. See 39 CFR 3025.14. Initial comments supporting a remand of this case are to be filed on or before August 5, 2013. This and other deadlines are set out in the attached Procedural Schedule. See 39 CFR 3025.41 through 3025.43.

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. See 39 U.S.C. § 404(d)(5). A Procedural Schedule has been developed to accommodate this statutory deadline. In the interest of expedition, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. **If any motions are filed by the Postal Service, responses are due 10 days after any such motion is filed.** See 39 CFR 3025.2(c).

It is ordered:

1. The Postal Service shall file the applicable Administrative Record regarding this appeal no later than July 15, 2013.
2. Any responsive pleading by the Postal Service to this Notice is due no later than July 15, 2013.
3. The Procedural Schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Tracy N. Ferguson is designated an officer of the Commission (Public Representative) to represent the interests of the general public.

By the Commission.

Ruth Ann Abrams
Acting Secretary

PROCEDURAL SCHEDULE

July 3, 2013	Filing of Appeal
July 15, 2013	Deadline for the Postal Service to file the applicable Administrative Record in this appeal
July 15, 2013	Deadline for the Postal Service to file any responsive pleading
August 5, 2013	Deadline for Petitioner's Form 61 or initial brief in support of the petition (see 39 CFR 3025.41)
August 19, 2013	Deadline for answering brief in support of the Postal Service (see 39 CFR 3025.42)
August 29, 2013	Deadline for reply briefs in response to answering briefs (see 39 CFR 3025.43)
October 30, 2013	Expiration of the Commission's 120-day decisional schedule (see 39 U.S.C. 404(d)(5))

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

In the Matter of:
Glenoaks Station
Burbank, California 91504

Docket No. A2013-5

**MOTION OF UNITED STATES POSTAL SERVICE
TO DISMISS PROCEEDINGS**
(July 15, 2013)

This matter commenced with a letter received by the Postal Regulatory Commission that purports to invoke its jurisdiction under 39 U.S.C. § 404(d) to consider an appeal of an alleged Postal Service decision to discontinue the Glenoaks Station in Burbank, California. The Postal Service moves to dismiss on three grounds. First, this appeal is premature as the Final Determination to Close the Glenoaks Station has not been posted. Second, the scope of section 404(d)(5) is limited to the discontinuance of a Post Office, and does not apply to the rearrangement of retail facilities within a community. Since the Petitioner's appeal concerns the rearrangement of retail facilities within the Burbank community, an event that falls outside the scope of section 404(d)(5), the Commission lacks subject matter jurisdiction and should dismiss the appeal. Third, the scope of section 404(d) is limited to Post Offices and its requirements do not extend to the closing of a station or branch; thus, the Commission lacks subject matter jurisdiction and should dismiss the appeal.

PROCEDURAL HISTORY

On July 3, 2013, the Postal Regulatory Commission ("Commission") docketed correspondence from Charlotte E. Costan, Sharyn Engle, Linda Ly, Anna May Nelson, and

Sharon Wright ("Petitioners").¹ The Commission also received correspondence on this matter from Victoria Lova on July 9, 2013.² These participants make no allegation that the Postal Service decision violated any statute or regulation. Rather, they make the general claim that the decision will negatively affect the community. By means of Order No. 1772 (July 5, 2013), the Commission instituted a proceeding under 39 U.S.C. §404(d)(5) and established Docket No. A2013-5 in order to consider Petitioners' appeals.

FACTUAL BACKGROUND

Glenoaks Station is located in Burbank, California at 1634 North San Fernando Boulevard, in an unincorporated area in Los Angeles County. On June 9, 2011, the Proposal to Close the Glenoaks Station and Continue to Provide Service by City Delivery (Proposal) was posted at the Glenoaks Station. Administrative Record, Item No. 17 and 23 (round-date stamp on Invitation to Comment indicates that it was removed on August 8, 2011).

On June 20, 2013, the Postal Service posted a one-page document entitled "Notice of Final Determination to [C]lose the Glenoaks Station." See Notice of Final Determination to Close Glenoaks Station.³ The final determination itself has not, however, been posted.⁴

¹ Petition for Review Received from Charlotte E. Costan Regarding Glenoaks Station Post Office, Burbank, CA 91504 (July 3, 2013); Petition for Review Received from Sharyn Engle Regarding Glenoaks Station Post Office, Burbank, CA 91504 (July 3, 2013); Petition for Review Received from Linda Ly Regarding Glenoaks Station Post Office, Burbank, CA 91504 (July 3, 2013); Petition for Review Received from Anna May Nelson Regarding Glenoaks Station Post Office, Burbank, CA 91504 (July 3, 2013); Petition for Review Received from Sharon Wright Regarding Glenoaks Station Post Office, Burbank, CA 91504 (July 3, 2013).

² Petition for Review Received from Victoria Lova Regarding Glenoaks Station Post Office, Burbank, CA 91504 (July 8, 2013).

³ The Notice of Final Determination to Close Glenoaks Station incorrectly included a notice of appeal rights to the Commission. This notice of appeal rights was included in error and does not create the right to appeal by virtue of its inclusion since subject matter jurisdiction cannot be created by waiver or forfeiture. See *U.S. v. Cotton*, 535 U.S. 625, 630 (2002); *U.S. v. Delgado-Garcia*, 374 F.3d 1337, 1341 (D.C. Cir. 2004); *Pollack v. Rosalind Franklin Univ.*, No. 04 C 5613, 2006 U.S. Dist. Lexis 92884, 13-14 (N.D. Ill. Dec. 20, 2006). The Final Determination text does not include a notice of appeal rights to the Commission.

⁴ The undersigned counsel originally advised the Commission that the final determination was posted on July 8, 2013. However, counsel was under the mistaken impression that the final determination had

Customers of the Glenoaks Station may obtain postal services at the Downtown Burbank Station, located approximately one mile from the Glenoaks Station; the Burbank Post Office, also located approximately one mile from the Glenoaks Station; and through <http://www.USPS.com/> and other alternate access options, including nine stamp consignment sites located within one mile of the Glenoaks Station. See Exhibit 1 (printout from [USPS.com](http://www.USPS.com/)).⁵

ARGUMENT

As an initial matter, this appeal is premature. Although the Postal Service has given customers a “notice” of the final determination by posting a one-page “Notice of Final Determination to [C]lose the Glenoaks Station”, as of the time of this filing, the final determination itself has not yet been posted in the affected installations. In this circumstance, dismissal is the appropriate remedy. See Order No. 829, *Lafontaine, Kansas*, PRC Docket No. A89-8 (June 29, 1989) (dismissing an appeal that was premature); see also Order No. 833, PRC Docket No. A89-10, *Fineview, New York* (July 19, 1989). The Commission’s jurisdiction need not be invoked because at the time the Commission received the petitions for review, the Final Determination itself was not publicly posted. Plans are underway to post the final determination, and when it is posted, the Postal Service will amend its filing of the administrative record accordingly.

Even assuming that the appeal was deemed to be timely filed by virtue of the posting of the “notice” of the final determination, the Commission should dismiss the complaint on jurisdictional grounds. Specifically, the procedural requirements of 39 U.S.C. § 404(d) do not

actually been posted. In fact, counsel now understands that the only document posted in the Glenoaks Station was a one-page notice entitled “Notice of Final Determination to [C]lose the Glenoaks Station,” that informed customers of the fact of the final determination. Contrary to counsel’s original understanding, the final determination document itself has not yet been posted, but efforts are being made by field personnel to do so. Should the final determination be posted during the pendency of this controversy, the Postal Service will provide notice to the Commission in the form of additions to the administrative record filed in this docket.

⁵ Exhibit 1 uses the term “Post Office” for retail units staffed by postal employees, thus including stations, branches and Post Offices.

apply because the closing of Glenoaks Station does not qualify as a discontinuance action envisioned by 39 U.S.C. § 404(d). When determining whether it has jurisdiction to hear an appeal, the Commission must consider the context of the Postal Service's actions in the affected community. Typically, a change to the Postal Service retail network in a community constitutes a "rearrangement" if the move or elimination of a Postal Service retail facility in that community is performed as part of an overall realignment of the network of access points in that community. As a result of the change, the postal services available to the community must continue to meet the community's postal needs as measured by customer use of postal services in that community.

The Commission and its predecessor, the former Postal Rate Commission, have long recognized that section 404(d) does not apply to Postal Service actions that constitute a rearrangement of retail facilities within a community.⁶ See Order No. 436, PRC Docket No. A82-10, *Oceana Station*, (June 25, 1982); Order No. 448, PRC Docket No. 2010-2, *Steamboat Springs, Colorado* (April 27, 2010); Order No. 477, PRC Docket No. 2010-3, *East Elko Station* (June 22, 2010); and Order No. 1159, PRC Docket No. 2011-90, *Pimmit Branch* (January 20, 2012). In 1982, the Commission dismissed an appeal considering the Postal Service's determination to close the Oceana Station in Virginia Beach as part of an overall plan to rearrange postal retail and delivery operations within the Virginia Beach community. The plan included the future establishment of a new retail facility in Virginia Beach, located four miles from Oceana Station.⁷ Order No. 436 at 4.

Petitioners served by Oceana Station claimed that the change in retail operations qualified as a discontinuance under 39 U.S.C. § 404(d). In dismissing the appeal, the

⁶ For convenience, the term "Commission" refers to both the former Postal Rate Commission and its successor, the Postal Regulatory Commission.

⁷ The City of Virginia Beach is relatively large at 307 square miles. See http://www.vbgov.com/file_source/dept/comit/Document/vb_facts_and_figures.pdf.

Commission opined that in enacting section 404(d), "Congress intended to permit the Postal Service to rely on less formal decision-making, and correspondingly, to give the Commission no jurisdiction to hear appeals of such decisions, when considering where retail facilities are to be located within the community." *Id.*, at 7. The Commission concluded that "the Postal Service is not required to follow the formal section 404([d]) procedure when it is merely rearranging its retail facilities in a community." *Id.*, at 1.

Similarly, in Steamboat Springs, the Commission dismissed an appeal after determining that the Postal Service had a "planned network of retail facilities in the Steamboat Springs community." Order No. 448 at 5. In that appeal, the Postal Service's planned network included the Sundance Post Office, which continued to house Post Office boxes, the Steamboat Springs Post Office (located 1.3 miles away), which provided retail services and Post Office box service, and plans to construct a new consolidated post office. *Id.*, at 5-6. In finding that the Postal Service's action is a rearrangement of retail facilities in the community and not subject to appeal under section 404(d), the Commission accordingly dismissed the appeal.

Even when the rearrangement of postal retail services within the community include no plans to build a new retail facility, the Commission has concluded that section 404(d) is inapplicable. In East Elko, the Postal Service closed the East Elko Station and transferred retail services to the main Elko Post Office, located 1.5 miles away. Order No. 477 at 7. In dismissing the appeal for lack of jurisdiction, the Commission explained "while there is no new facility... the East Elko Station customers are not losing access to the postal services offered in their community." *Id.* Thus, under the Commission's formulation, closing the East Elko Station was not a discontinuance action within the scope of section 404(d).

Most recently, in Pimmit Branch, the Postal Service decided to consolidate retail services from Pimmit Branch to the new retail facility at the main Falls Church Post Office, located two miles away. Order No. 1159 at 11. The Commission found that closing the Pimmit

Branch was part of a broader plan to rearrange retail facilities in the Falls Church community; thus, it concluded that section 404(d) did not apply. *Id.*, at 12. Since the Commission has consistently held that the requirements of section 404(d) do not apply to such rearrangements, it dismissed the appeal for lack of jurisdiction.

As recognized in longstanding Commission precedent, the section 404(d) procedural requirements apply only where postal customers lose access to postal services, and postal customers do not lose access to postal services where alternate retail facilities are located in “close proximity” to the discontinued station. See Order No. 477 at 7-8. Here, Glenoaks Station customers will continue to have access to the Downtown Burbank Station, located approximately one mile from the Glenoaks Station, the Burbank Post Office, also located approximately one mile away from the Glenoaks Station, and numerous alternative access retail locations.⁸ Due to the close proximity of other postal facilities and the presence of alternate access options, closing the Glenoaks Station will not cause postal customers to lose access to postal services in their community. Because this appeal concerns the rearrangement of retail facilities within a community, section 404(d) does not apply. Accordingly, the Commission should dismiss the appeal.

Finally, the Commission should dismiss the appeal on grounds that the facility in question is not a “Post Office.” This appeal concerns the discontinuance of a classified station, which is a retail facility that is Postal Service-operated and is under the responsibility of an Administrative Post Office. See Handbook PO-101, Postal Service-Operated Retail Facilities Discontinuance Guide (January 2012), at 53 (defining Classified Station). In the Postal Service’s view, section 404(d) does not apply to the Glenoaks Station because the Glenoaks

⁸ According to usps.com, there are nine alternate access retail locations within one mile of the Glenoaks Station and a total of 28 locations within a three mile radius of the Glenoaks Station. Also, in addition to the Burbank Post Office and the Downtown Burbank Post Office, there are two other Postal Service-Operated retail facilities (Grand Central and Sun Valley) located within three miles of the Glenoaks Station.

Station is not an independent Post Office.⁹ Petitioners fail to allege facts that constitute a condition precedent to any jurisdiction of the Commission under Section 404(d). Therefore, the Commission should dismiss the appeal for lack of jurisdiction.

CONCLUSION

The United States Postal Service respectfully requests that the Postal Regulatory Commission dismiss this appeal.

Respectfully submitted,

UNITED STATES POSTAL SERVICE
By its attorneys:

Anthony F. Alverno
Chief Counsel
Global Business and Service Development & Service
Development

Laura Zuber

475 L'Enfant Plaza, S.W.
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(202) 268-6036; Fax -5329
July 15, 2013

⁹ See Comments of the United States Postal Service Regarding Jurisdiction Under (Current) Section 404(d), PRC Docket No. 2010-3, *East Elko Station* (April 19, 2010); H.R. Rep. No. 94-1444, 94th Cong., 2d Sess. 17 (1976) (conference report on H.R. 8603, which explained that the provision granting the right of appeal apply to Post Offices only and not to other postal facilities).

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DIST	LOCATION	HOURS
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1.3 mi	BURBANK › 2140 N HOLLYWOOD WAY BURBANK, CA 91505-9998	Mon-Fri 9:00am - 6:30pm Sat 9:00am - 3:00pm Sun Closed Lot Parking Available
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1.4 mi	WOODBURY UNIVERSITY BOOKSTORE › 7500 N GLENOAKS BLVD BURBANK, CA 91504-1052	
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1.5 mi	WALGREENS › 2501 W MAGNOLIA BLVD BURBANK, CA 91505-3030	
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1.7 mi	CVS › 1820 W VERDUGO AVE BURBANK, CA 91506-2150	
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1.7 mi	US BANK › 1750 W OLIVE AVE BURBANK, CA 91506-2434	
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1.8 mi	RALPHS › 25 E ALAMEDA AVE BURBANK, CA 91502-2029	
	800-ASK-USPS® (800-275-8777) Stamp booklets only.	
1.8 mi	CVS › 101 E ALAMEDA AVE BURBANK, CA 91502-2004	
	800-ASK-USPS® (800-275-8777) Stamp booklets only.	
1.9 mi	WALGREENS › 1028 S SAN FERNANDO BLVD BURBANK, CA 91502-1537	
	800-ASK-USPS® (800-275-8777) Stamp booklets only.	
2.1 mi	STAPLES › 1060 W ALAMEDA AVE BURBANK, CA 91506-2846	
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2.1 mi	US BANK › 1110 W ALAMEDA AVE BURBANK, CA 91506-2806	
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2.1 mi	PAVILIONS › 1110 W ALAMEDA AVE BURBANK, CA 91506-2806	
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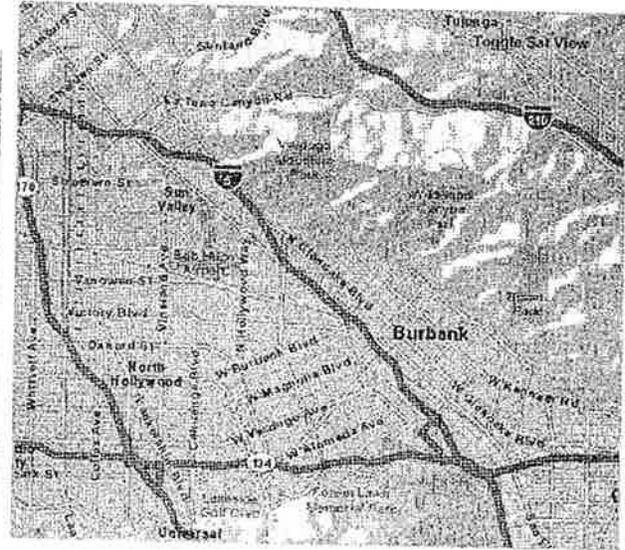
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2.5 mi	GRAND CENTRAL > 6444 SAN FERNANDO RD GLENDALE, CA 91201-5079 800-ASK-USPS® (800-275-8777)	Mon-Fri 9:00am - 5:30pm Sat 9:00am - 2:00pm Sun Closed Lot Parking Available
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3.0 mi	RALPHS > 10900 MAGNOLIA BLVD N HOLLYWOOD, CA 91801-3903 800-ASK-USPS® (800-275-8777) Stamp booklets only.	
3.0 mi	TOLUCA LAKE > 10063 RIVERSIDE DR TOLUCA LAKE, CA 91602-9998 800-ASK-USPS® (800-275-8777)	Mon-Fri 9:00am - 5:30pm Sat 10:00am - 4:00pm Sun Closed Street Parking Available
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3.2 mi	CVS > 5669 LANKERSHIM BLVD N HOLLYWOOD, CA 91801-1006 Stamp booklets only.	



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3.3 mi	CHANDLER › 11304 CHANDLER BLVD NORTH HOLLYWOOD, CA 91601 -9998	Mon-Fri 10:00am - 5:30pm Sat 9:30am - 4:00pm Sun Closed Lot Parking Available
	800-ASK-USPS® (800-275-8777)	
3.4 mi	VICTORY CENTER › 6598 LANKERSHIM BLVD NORTH HOLLYWOOD, CA 91606 -9998	Mon-Fri 9:00am - 5:30pm Sat 9:00am - 2:00pm Sun Closed Lot Parking Available
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3.4 mi	CVS › 4744 LANKERSHIM BLVD N HOLLYWOOD, CA 91602-1833	
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3.5 mi	HEALTHY WATER & ICE › 7455 LANKERSHIM BLVD STE B NORTH HOLLYWOOD, CA 91605 -2823	Mon-Sat 9:00am - 10:00pm Sun 10:00am - 10:00pm
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3.6 mi	RALPHS › 8938 GLENOAKS BLVD SUN VALLEY, CA 91352-2037	
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	800-ASK-USPS® (800-275-8777) Stamp booklets only.	
3.8 mi	RALPHS › 8857 LAUREL CANYON BLVD N HOLLYWOOD, CA 91606-1522	
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3.8 mi	LAUREL CANYON › 7035 LAUREL CANYON BLVD NORTH HOLLYWOOD, CA 91605 -9988	Mon-Wed, Fri 11:00am - 4:30pm Thu 10:00am - 3:00pm Sat 10:00am - 2:00pm Sun Closed Lot Parking Available
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3.8 mi	NORTH HOLLYWOOD › 7035 LAUREL CANYON BLVD NORTH HOLLYWOOD, CA 91605 -9998	Mon-Wed, Fri 11:00am - 4:30pm Thu 10:00am - 3:00pm Sat-Sun Closed Lot Parking Available
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3.9 mi	NORTH GLENDALE › 1009 N PACIFIC AVE GLENDALE, CA 91202-9998	Mon-Fri 9:00am - 5:30pm Sat 9:00am - 2:00pm Sun Closed
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3.9 mi	WELLS FARGO BANK › 12160 VICTORY BLVD N HOLLYWOOD, CA 91606-3277	
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3.9 mi	VALLEY PLAZA › 8418 BELLINGHAM AVE NORTH HOLLYWOOD, CA 91606 -1492	Mon-Fri 8:30am - 12:30pm 1:30pm - 4:00pm Sat-Sun Closed Lot Parking Available
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BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

In the Matter of:

Glenoaks Station
Burbank, California 91504

Docket No. A2013-5

NOTICE OF THE UNITED STATES POSTAL SERVICE OF FILING ERRATA
(July 18, 2013)

The Postal Service hereby gives notice of filing errata to its Motion to Dismiss Proceedings, filed on July 15, 2013. Nine minor corrections to pages 1, 3 and 4 of the Motion to Dismiss Proceedings are being filed as an attachment to this pleading. The corrections are shown in gray highlighted text. The modifications reflect the fact that an incorrect version of the Final Determination was posted on July 15, 2013. This incorrect Final Determination was subsequently withdrawn and replaced by a corrected version of the Final Determination on July 16, 2013. The July 15, 2013 posting of the incorrect Final Determination is inconsequential to the arguments presented in the Motion to Dismiss Proceedings, however, because the Petitioners filed the instant appeal before the posting of any copy of the Final Determination, whether correct or incorrect. The Postal Service regrets the inconvenience, but does not believe any party is prejudiced.

Respectfully submitted,

UNITED STATES POSTAL SERVICE
By its attorneys:

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July 18, 2013

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

In the Matter of:
Glenoaks Station
Burbank, California 91504

Docket No. A2013-5

**MOTION OF UNITED STATES POSTAL SERVICE
TO DISMISS PROCEEDINGS**
(July 15, 2013)

This matter commenced with a letter received by the Postal Regulatory Commission that purports to invoke its jurisdiction under 39 U.S.C. § 404(d) to consider an appeal of an alleged Postal Service decision to discontinue the Glenoaks Station in Burbank, California. The Postal Service moves to dismiss on three grounds. First, this appeal is premature as the appeal was received before the Final Determination was posted. Second, the scope of section 404(d)(5) is limited to the discontinuance of a Post Office, and does not apply to the rearrangement of retail facilities within a community. Since the Petitioner's appeal concerns the rearrangement of retail facilities within the Burbank community, an event that falls outside the scope of section 404(d)(5), the Commission lacks subject matter jurisdiction and should dismiss the appeal. Third, the scope of section 404(d) is limited to Post Offices and its requirements do not extend to the closing of a station or branch; thus, the Commission lacks subject matter jurisdiction and should dismiss the appeal.

PROCEDURAL HISTORY

On July 3, 2013, the Postal Regulatory Commission ("Commission") docketed correspondence from Charlotte E. Costan, Sharyn Engle, Linda Ly, Anna May Nelson, and

Sharon Wright (“Petitioners”).¹ The Commission also received correspondence on this matter from Victoria Lova on July 9, 2013.² These participants make no allegation that the Postal Service decision violated any statute or regulation. Rather, they make the general claim that the decision will negatively affect the community. By means of Order No. 1772 (July 5, 2013), the Commission instituted a proceeding under 39 U.S.C. §404(d)(5) and established Docket No. A2013-5 in order to consider Petitioners’ appeals.

FACTUAL BACKGROUND

Glenoaks Station is located in Burbank, California at 1634 North San Fernando Boulevard, in an unincorporated area in Los Angeles County. On June 9, 2011, the Proposal to Close the Glenoaks Station and Continue to Provide Service by City Delivery (Proposal) was posted at the Glenoaks Station. Administrative Record, Item No. 17 and 23 (round-date stamp on Invitation to Comment indicates that it was removed on August 8, 2011).

On June 20, 2013, the Postal Service posted a one-page document entitled “Notice of Final Determination to [C]lose the Glenoaks Station.” See Notice of Final Determination to

¹ Petition for Review Received from Charlotte E. Costan Regarding Glenoaks Station Post Office, Burbank, CA 91504 (July 3, 2013); Petition for Review Received from Sharyn Engle Regarding Glenoaks Station Post Office, Burbank, CA 91504 (July 3, 2013); Petition for Review Received from Linda Ly Regarding Glenoaks Station Post Office, Burbank, CA 91504 (July 3, 2013); Petition for Review Received from Anna May Nelson Regarding Glenoaks Station Post Office, Burbank, CA 91504 (July 3, 2013); Petition for Review Received from Sharon Wright Regarding Glenoaks Station Post Office, Burbank, CA 91504 (July 3, 2013).

² Petition for Review Received from Victoria Lova Regarding Glenoaks Station Post Office, Burbank, CA 91504 (July 8, 2013).

Close Glenoaks Station.³ A corrected version of the final determination itself has not, however, been posted.⁴

Customers of the Glenoaks Station may obtain postal services at the Downtown Burbank Station, located approximately one mile from the Glenoaks Station; the Burbank Post Office, also located approximately one mile from the Glenoaks Station; and through <http://www.USPS.com/> and other alternate access options, including nine stamp consignment sites located within one mile of the Glenoaks Station. See Exhibit 1 (printout from [USPS.com](http://www.USPS.com/)).⁵

ARGUMENT

As an initial matter, this appeal is premature. Although the Postal Service has given customers a “notice” of the final determination by posting a one-page “Notice of Final Determination to [C]lose the Glenoaks Station”, as of the time of this filing, the corrected final determination itself has not yet been posted in the affected installations. In this circumstance, dismissal is the appropriate remedy. See Order No. 829, *Lafontaine, Kansas*, PRC Docket No. A89-8 (June 29, 1989) (dismissing an appeal that was premature); see also Order No. 833, PRC Docket No. A89-10, *Fineview, New York* (July 19, 1989). The Commission’s jurisdiction

³ The Notice of Final Determination to Close Glenoaks Station incorrectly included a notice of appeal rights to the Commission. This notice of appeal rights was included in error and does not create the right to appeal by virtue of its inclusion since subject matter jurisdiction cannot be created by waiver or forfeiture. See *U.S. v. Cotton*, 535 U.S. 625, 630 (2002); *U.S. v. Delgado-Garcia*, 374 F.3d 1337, 1341 (D.C. Cir. 2004); *Pollack v. Rosalind Franklin Univ.*, No. 04 C 5613, 2006 U.S. Dist. Lexis 92884, 13-14 (N.D. Ill. Dec. 20, 2006). The corrected Final Determination text does not include a notice of appeal rights to the Commission.

⁴ The undersigned counsel originally advised the Commission that the final determination was posted on June 20, 2013. However, counsel was under the mistaken impression that the final determination had actually been posted. In fact, counsel now understands that the only document posted in the Glenoaks Station on June 20, 2013 was a one-page notice entitled “Notice of Final Determination to [C]lose the Glenoaks Station,” that informed customers of the facts of the final determination. On July 15, 2013, a version of the final determination was posted, but this version was incorrect. Contrary to counsel’s original understanding, a corrected Final Determination document itself has not yet been posted, but efforts are being made by field personnel to do so. Should the Final Determination be posted during the pendency of this controversy, the Postal Service will provide notice to the Commission in the form of additions to the administrative record filed in this docket.

⁵ Exhibit 1 uses the term “Post Office” for retail units staffed by postal employees, thus including stations, branches and Post Offices.

need not be invoked because at the time the Commission received the petitions for review, the Final Determination itself was not publicly posted. Plans are underway to post the corrected final determination, and when it is posted, the Postal Service will amend its filing of the administrative record accordingly.

Even assuming that the appeal was deemed to be timely filed by virtue of the posting of the "Notice" of the Final Determination, the Commission should dismiss the complaint on jurisdictional grounds. Specifically, the procedural requirements of 39 U.S.C. § 404(d) do not apply because the closing of Glenoaks Station does not qualify as a discontinuance action envisioned by 39 U.S.C. § 404(d). When determining whether it has jurisdiction to hear an appeal, the Commission must consider the context of the Postal Service's actions in the affected community. Typically, a change to the Postal Service retail network in a community constitutes a "rearrangement" if the move or elimination of a Postal Service retail facility in that community is performed as part of an overall realignment of the network of access points in that community. As a result of the change, the postal services available to the community must continue to meet the community's postal needs as measured by customer use of postal services in that community.

The Commission and its predecessor, the former Postal Rate Commission, have long recognized that section 404(d) does not apply to Postal Service actions that constitute a rearrangement of retail facilities within a community.⁶ See Order No. 436, PRC Docket No. A82-10, *Oceana Station*, (June 25, 1982); Order No. 448, PRC Docket No. 2010-2, *Steamboat Springs, Colorado* (April 27, 2010); Order No. 477, PRC Docket No. 2010-3, *East Elko Station* (June 22, 2010); and Order No. 1159, PRC Docket No. 2011-90, *Pimmit Branch* (January 20, 2012). In 1982, the Commission dismissed an appeal considering the Postal Service's determination to close the Oceana Station in Virginia Beach as part of an overall plan to

⁶ For convenience, the term "Commission" refers to both the former Postal Rate Commission and its successor, the Postal Regulatory Commission.

rearrange postal retail and delivery operations within the Virginia Beach community. The plan included the future establishment of a new retail facility in Virginia Beach, located four miles from Oceana Station.⁷ Order No. 436 at 4.

Petitioners served by Oceana Station claimed that the change in retail operations qualified as a discontinuance under 39 U.S.C. § 404(d). In dismissing the appeal, the Commission opined that in enacting section 404(d), “Congress intended to permit the Postal Service to rely on less formal decision-making, and correspondingly, to give the Commission no jurisdiction to hear appeals of such decisions, when considering where retail facilities are to be located within the community.” *Id.*, at 7. The Commission concluded that “the Postal Service is not required to follow the formal section 404([d]) procedure when it is merely rearranging its retail facilities in a community.” *Id.*, at 1.

Similarly, in Steamboat Springs, the Commission dismissed an appeal after determining that the Postal Service had a “planned network of retail facilities in the Steamboat Springs community.” Order No. 448 at 5. In that appeal, the Postal Service’s planned network included the Sundance Post Office, which continued to house Post Office boxes, the Steamboat Springs Post Office (located 1.3 miles away), which provided retail services and Post Office box service, and plans to construct a new consolidated post office. *Id.*, at 5-6. In finding that the Postal Service’s action is a rearrangement of retail facilities in the community and not subject to appeal under section 404(d), the Commission accordingly dismissed the appeal.

Even when the rearrangement of postal retail services within the community include no plans to build a new retail facility, the Commission has concluded that section 404(d) is inapplicable. In East Elko, the Postal Service closed the East Elko Station and transferred retail services to the main Elko Post Office, located 1.5 miles away. Order No. 477 at 7. In dismissing

⁷ The City of Virginia Beach is relatively large at 307 square miles. See http://www.vbgov.com/file_source/dept/comit/Document/vb_facts_and_figures.pdf.

the appeal for lack of jurisdiction, the Commission explained “while there is no new facility... the East Elko Station customers are not losing access to the postal services offered in their community.” *Id.* Thus, under the Commission's formulation, closing the East Elko Station was not a discontinuance action within the scope of section 404(d).

Most recently, in Pimmit Branch, the Postal Service decided to consolidate retail services from Pimmit Branch to the new retail facility at the main Falls Church Post Office, located two miles away. Order No. 1159 at 11. The Commission found that closing the Pimmit Branch was part of a broader plan to rearrange retail facilities in the Falls Church community; thus, it concluded that section 404(d) did not apply. *Id.*, at 12. Since the Commission has consistently held that the requirements of section 404(d) do not apply to such rearrangements, it dismissed the appeal for lack of jurisdiction.

As recognized in longstanding Commission precedent, the section 404(d) procedural requirements apply only where postal customers lose access to postal services, and postal customers do not lose access to postal services where alternate retail facilities are located in “close proximity” to the discontinued station. See Order No. 477 at 7-8. Here, Glenoaks Station customers will continue to have access to the Downtown Burbank Station, located approximately one mile from the Glenoaks Station, the Burbank Post Office, also located approximately one mile away from the Glenoaks Station, and numerous alternative access retail locations.⁸ Due to the close proximity of other postal facilities and the presence of alternate access options, closing the Glenoaks Station will not cause postal customers to lose access to postal services in their community. Because this appeal concerns the rearrangement of retail

⁸ According to usps.com, there are nine alternate access retail locations within one mile of the Glenoaks Station and a total of 28 locations within a three mile radius of the Glenoaks Station. Also, in addition to the Burbank Post Office and the Downtown Burbank Post Office, there are two other Postal Service-Operated retail facilities (Grand Central and Sun Valley) located within three miles of the Glenoaks Station.

facilities within a community, section 404(d) does not apply. Accordingly, the Commission should dismiss the appeal.

Finally, the Commission should dismiss the appeal on grounds that the facility in question is not a "Post Office." This appeal concerns the discontinuance of a classified station, which is a retail facility that is Postal Service-operated and is under the responsibility of an Administrative Post Office. See Handbook PO-101, Postal Service-Operated Retail Facilities Discontinuance Guide (January 2012), at 53 (defining Classified Station). In the Postal Service's view, section 404(d) does not apply to the Glenoaks Station because the Glenoaks Station is not an independent Post Office.⁹ Petitioners fail to allege facts that constitute a condition precedent to any jurisdiction of the Commission under Section 404(d). Therefore, the Commission should dismiss the appeal for lack of jurisdiction.

CONCLUSION

The United States Postal Service respectfully requests that the Postal Regulatory Commission dismiss this appeal.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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July 15, 2013

⁹ See Comments of the United States Postal Service Regarding Jurisdiction Under (Current) Section 404(d), PRC Docket No. 2010-3, *East Elko Station* (April 19, 2010); H.R. Rep. No. 94-1444, 94th Cong., 2d Sess. 17 (1976) (conference report on H.R. 8603, which explained that the provision granting the right of appeal apply to Post Offices only and not to other postal facilities).