

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Bronx General Post Office
Bronx, New York

Docket No. A2013-6

PUBLIC REPRESENTATIVE RESPONSE IN SUPPORT OF
UNITED STATES POSTAL SERVICE MOTION
TO DISMISS PROCEEDINGS

(July 24, 2013)

Pursuant to 39 CFR 3001.21 of the Commission's Rules, the Public Representative hereby responds in support of the Postal Service's motion to dismiss the appeal of the Postal Service's decision to relocate the Bronx, New York GPO to a location yet to-be-determined.¹

I. PETITIONS FOR REVIEW

The Commission received letter petitions for review from Pabón, postmarked July 3, 2013; Colón, postmarked July 3, 2013; and Eilenfeldt on behalf of Community-Labor United for Postal Jobs & Services (CLUPJS), postmarked July 3, 2013. A petition was also received from Hutkins on behalf of Messrs. Eilenfeldt and Pabón on July 3, 2013, stating that each had separately mailed appeals to the Commission. The three mailed Petitions were posted on the Commission's website July 9, 2013.

¹ Motion of United States Postal Service to Dismiss Proceedings, Docket No. A2013-6. July 18, 2013 (Motion).

Section 404(d)(5) of title 39 provides the Commission authority to review decisions of the Postal Service to close or consolidate post offices. Petitioners Pabón and Eilenfeldt argue that the Postal Service's action was arbitrary and capricious and without observance of procedures required by law. Petitioner Eilenfeldt for CLUPJS also claims that closing the Bronx GPO will destroy the historic, cultural and the uniting reality of the Bronx GPO. Petitioner Colón claims the closing of the Bronx GPO will cause great harm to Petitioner in her work at Hostos Community College and the residents of Petitioner's Zip Code.

The Commission instituted this proceeding to consider the Petition and established July 19, 2013 as the deadline for the Postal Service to file the applicable Administrative Record for this appeal and to file any responsive pleading.² On July 18, 2013, the Postal Service filed its Motion, but did not file an Administrative Record.³

II. POSTAL SERVICE MOTION TO DISMISS

The Postal Service's Motion argues that its decision to move retail postal services from the Bronx GPO is a relocation rather than discontinuance. Motion at 1. The Bronx GPO retail services will be relocated within the community to a yet to-be-determined location within the same Zip code. Motion, Ex. 1 at 4. There are eight other Postal Service operated retail facilities within one mile of the Bronx GPO. Motion at 3. The Bronx GPO will continue to operate until the replacement facility is ready for use as a Post Office. *Id.* The Postal Service states that the new location will offer the same level of service with the same hours. Motion, Ex. 1 at 4. The relocation will result in a cost savings. Motion at 3.

² Notice and Order Accepting Appeal and Establishing Procedural Schedule, July 10, 2013.

³ The Motion includes Exhibit 1, the June 3, 2013 Final Decision for Relocation of Retail Services in Bronx, New York signed by Tom A. Samra, Vice President, Facilities, and Exhibit 2, an internet map listing the Post Offices and Approved Postal Providers within 1 mile of the Bronx GPO at Zip Code 10451-9998.

The Postal Service points out that 39 U.S.C. 404(d)(5) is limited to discontinuances of post offices and not relocations and cites to several Commission orders for support. The Motion concludes that the relocation “falls outside the scope of 39 U.S.C. 404(d)(5)” and, accordingly, the Commission “lacks subject matter jurisdiction and should dismiss the appeal.” *Id.* at 1-2.

III. DISCUSSION

A. Commission Precedents Demonstrate the Commission Lacks Jurisdiction

A Postal Service determination to “close or consolidate any post office may be appealed by any person served by such office to the Postal Regulatory Commission.” 39 U.S.C. § 404(d)(5). It is well settled that Commission jurisdiction arises only where, the Postal Service’s action constitutes either a “closing” or a “consolidation.” If the action is to relocate a post office, the Commission does not have authority to consider the merits of the appeal.

A series of factually similar Commission cases, most of which are cited by the Postal Service, support its Motion. *Id.* at 4-7. The Commission has long held that a relocation of retail postal operations from one facility to another within the community does not constitute, as a matter of law, a “closing” or “consolidation” for purposes of section 404(d).

The following Commission orders are illustrative of post office relocations:

- Docket No. A2013-1, *Santa Monica*, Order Granting Motion to Dismiss, Order No. 1588, December 19, 2012 (Ruling that 39 U.S.C. §404(d) did not apply where the transfer of retail operations to a carrier annex in the same community less than one mile away was a relocation).
- Docket No. A2012-17, *Venice*, Order Granting Motion to Dismiss, Order No. 1166, January 24, 2012. (Ruling that 39 U.S.C. §404(d) did not apply where the transfer of retail operations to a carrier annex 400 feet away was a relocation of retail services).

- Docket No. A2011-21, *Ukiah*, Order Granting Motion to Dismiss, Order No. 804, August 15, 2011. (Ruling that 39 U.S.C. § 404(d) did not apply where the transfer of retail operations to a carrier annex one mile away from the main post office was a relocation of retail services);
- Docket No. A2010-2, *Sundance Post Office-Steamboat Springs*, Order Dismissing Appeal, Order No. 448, April 27, 2010. (Ruling that 39 U.S.C. § 404(d) did not apply where the transfer of retail operations to a facility within the same community constituted a relocation or rearrangement of facilities).
- Docket No. A2007-1, *Ecorse Classified Branch*, Order Dismissing Appeal on Jurisdictional Grounds, Order No. 37, October 9, 2007. (Ruling that 39 U.S.C. §404(d) did not apply where the new retail facility was 1.7 miles away in the same community).
- Docket No. A86-13, *Wellfleet*, Order Dismissing Docket No. A86-13, Order No. 696, June 10, 1986. (Ruling that 39 U.S.C. § 404(d) did not apply where the new location was within communities roughly 2-3 miles apart with no defined borders and the new location was 1.2 miles away from the former location).
- Docket No. A82-10, *Oceana Station*, Order Dismissing Docket No. A82-10, Order No. 436, (June 25, 1982. (Ruling that 39 U.S.C. § 404(d) did not apply where the new location was four miles away from the former location).

These decisions support the conclusion that the relocation of retail services or rearrangement of retail facilities within a community does not constitute a closing or a consolidation—a prerequisite for an appeal under Section 404(d). Of particular significance is that in at least two decisions the Commission emphasized customers would continue to have the same level of access to retail services in the community. *Ukiah*, Order No. 804 at 4; *Santa Monica*, Order No. 1588 at 5. Moreover, the

requirements of section 404(d) are concerned with the provision of a facility within a community rather than maintaining a specific building housing a post office. *Santa Monica, Id.*; *Oceana Station, supra*, at 6.

B. Relocation Could Become A Consolidation

The unusual aspect of the decision to relocate lies in the fact that the Postal Service has not yet determined the new location. The Postal Service's Final Decision assures that the new location will remain in the Bronx. It also assures that service at the Bronx GPO will not cease until the new location is determined and the services are moved to the new location. It has observed a number of potential available sites in the neighborhood. Motion, Ex. 1 at 4. The Postal Service also points out that if the Postal Service decides to market the Bronx GPO property it will offer potential buyers the opportunity to leaseback a portion so that retail services could remain in the same location. *Id.* 4. .

One caveat must be mentioned about this open-ended relocation plan. The ultimate action must not involve a consolidation with another post office. A consolidation is defined as "a change in the management structure of a post office which includes the elimination of the postmaster position."⁴ A consolidation of the Bronx GPO with another of the many postal locations in the Bronx would be subject to appeal under section 404(d). It is also important that the Bronx GPO remain open until the new replacement location is able to open. Otherwise, depending upon the factual circumstances, the cessation of operations at the Bronx GPO might be deemed grounds for appeal of a post office closing.

C. Postal Service's Consideration of Community Concerns

Although an appeal to the Commission of the relocation decision is precluded by law, those interested in the Bronx community had some opportunity to comment on the

⁴ *Wellfleet, supra*, Order No. 696 at 2.

anticipated relocation prior to the March 14, 2013 initial decision to relocate and in the appeals filed thereafter. Motion, Ex. 1 at 2-3.

The regulations requiring specific Postal Service procedures for relocations are set out in 39 CFR 241.4. It appears the Postal Service complied with those requirements. The Final Decision details the concerns expressed by several citizens, community organizations, official members of New York City and state governing bodies, and U.S. Congressmen. Motion, Ex. 1 at 1. They raised concerns regarding the impact on historic resources and laws requiring historic preservation, procedural errors relating to community notice and environmental considerations, access to postal services, and the negative impact on the community.

The Final Decision explained in detail how the Postal Service will preserve the historic value of the Bronx GPO and comply with statutory and regulatory requirements under NEPA, as necessary, once reuse plans for the Bronx GPO are considered. The Final Decision also rejected the concerns about notice, citing the opportunities for meetings and comments and that customers' access will be unaffected, particularly as there are no delivery units located at the Bronx GPO. Motion, Ex. 1 at 1-4.

Because the Postal Service's action is at this time a planned relocation, these factors do not enter into the Commission's consideration of this appeal. However, they do indicate that other avenues for dialog and potential relief for the Petitioners may lie in the application of laws and regulations intended to protect historical and cultural assets and the environment.

IV. CONCLUSION

For the reasons stated above, for lack of subject matter jurisdiction the Commission should grant the Motion to Dismiss without prejudice to re-filing if the Postal Service should seek to consolidate the Bronx GPO with another Postal Service facility or should close the Bronx GPO without concurrently opening a replacement location.

Respectfully Submitted,

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