

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

*IN THE MATTER OF:*  
BERKELEY MAIN POST OFFICE  
BERKELEY, CA 94704

DOCKET No. A2013-9

**MOTION OF UNITED STATES POSTAL SERVICE  
TO DISMISS PROCEEDINGS**  
(August 9, 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 Berkeley Main Post Office (“Berkeley MPO”).<sup>1</sup> The Postal Service decided to relocate the Berkeley MPO to a location yet to-be-determined; no discontinuance occurred. As the Postal Service has consistently maintained and the Commission has previously held, the scope of 39 U.S.C. § 404(d)(5) is limited to the discontinuance of a Post Office, and does not apply to the relocation of a Post Office. Since the Petitioner’s appeal concerns the relocation of a Post Office, an event that falls outside the scope of section 404(d)(5), the Commission lacks subject matter jurisdiction and should dismiss the appeal.

PROCEDURAL HISTORY

On July 31, 2013, the Postal Regulatory Commission (“Commission”) docketed correspondence from Tom Bates, Mayor of Berkeley, California (“Petitioner”). Petitioner

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<sup>1</sup> Appeal Letter from Mayor Tom Bates Regarding USPS Final Determination, Berkeley Main Post Office, PRC Docket No. A2013-9 (July 31, 2013).

states that the Postal Service decision in question is not a relocation of services, but rather a sale of historic property. Petitioner argues that the Postal Service failed to abide by requirements of section 404(d)(5)(B) applicable to Post Office discontinuance and that the decision is unsupported by the record. He argues that there is no suitable location in the ZIP Code that is both affordable and with sufficient space to provide similar services. By means of Order No. 1795 (August 1, 2013), the Commission instituted a proceeding under 39 U.S.C. § 404(d)(5) and established Docket No. A2013-9 in order to consider the Petitioner's appeal.

#### FACTUAL BACKGROUND

The Berkeley MPO is located in Berkeley, California. On July 18, 2013, Tom A. Samra, Vice President of Facilities, issued a final decision letter stating that the Postal Service was relocating the Berkeley MPO, located at 2000 Alston Way, Berkeley California, to a yet to-be-determined location. See Exhibit 1. The final decision addressed the concerns raised by requests to review the Postal Service relocation of retail services from Berkeley MPO, announced on April 19, 2013. The final decision explained that the Postal Service has complied with all of its statutory and regulatory obligations, specifically section 106 of the National Historic Preservation Act and the National Environmental Policy Act, throughout the relocation process and will continue to do so. *Id.* at 2. Additionally, the final decision letter explained that concerns that the Postal Service failed to follow 39 U.S.C. § 404(d) are misplaced since section 404(d) relates to Post Office closings and consolidations, not relocations. *Id.* at 3. As

discussed in further detail below, relocation of retail services do not fall under the purview of section 404(d).

In responding to concerns of maintaining and accessing postal services, when determining the new location, the Postal Service will only consider relocation spaces that are convenient and otherwise suitable to Postal customers within the same ZIP Code. *Id.* at 2. Moreover, the new location will provide the same services and will operate the same hours as the Berkeley MPO. Additionally, the Postal Service assures customers that it will continue to operate the Berkeley MPO until the replacement facility is ready for use as a Post Office.

Additionally, there are two other Postal Service-operated retail facilities within one mile of the Berkeley MPO; Sather Gate Station, located approximately 0.6 mile away, and North Berkeley Post Office, located approximately 0.7 mile away. See Exhibit 2 (printout from [www.usps.com](http://www.usps.com)).<sup>2</sup> Customers of the Berkeley MPO may also obtain services through <http://www.USPS.com/> and other alternate access options, including fourteen stamp consignment sites located within one mile of the Berkeley MPO. *Id.*

## ARGUMENT

The Commission lacks jurisdiction to consider an appeal of a Post Office relocation under 39 U.S.C. § 404(d). Section 404(d) provides that an appeal under that section must concern a discontinuance action. See 39 U.S.C. § 404(d). The Commission has consistently held throughout decades of Post Office appeals practice that section 404(d) does not apply to a relocation of retail operations to another facility

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<sup>2</sup> Exhibit 2 uses the term “Post Office” for retail units staffed by postal employees, thus including stations, branches and Post Offices.

within the same community. See Order No. 1588, Order Dismissing Appeal, PRC Docket A2013-1, *Santa Monica, California* (December, 19, 2012) (ruling that transfer of retail operations to a carrier annex less than one mile away from the main post office was a relocation of retail services and 39 U.S.C. § 404(d) did not apply); Order No. 1166, Order Dismissing Appeal, PRC Docket A2012-17, *Venice, California* (January 24, 2012) (same where the new location was 400 feet from the former location); Order No. 804, Order Dismissing Appeal, PRC Docket A2011-21, *Ukiah, California* (August 15, 2011) (same where the new location was one mile from the former location); Order No. 448, Order Dismissing Appeal, PRC Docket No. A2010-2, *Steamboat Springs, Colorado* (April 27, 2010) (ruling that the transfer of retail operations to a facility within the same community constituted a relocation or rearrangement of facilities and 39 U.S.C. § 404(d) did not apply); Order No. 696, PRC Docket No. A86-13, *Wellfleet, Massachusetts 02667* (June 10, 1986) (ruling that transfer of retail operations to a new location 1.2 miles away from the former location was a relocation of retail services and 39 U.S.C. § 404(d) did not apply); Order No. 436, PRC Docket No. A82-10, *Oceana Station* (June 25, 1982) (same where new location was four miles away from the former location).

In previous cases, the Commission has concluded that a particular action affecting a postal retail facility constitutes relocation outside the scope of 39 U.S.C. § 404(d) if both the current site and the proposed future site of the retail facility reside in the same community. For instance, in 1982, the Commission upheld a Postal Service 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 within Virginia Beach and four miles away from the site of Oceana Station.<sup>3</sup> Residents served by Oceana Station claimed that the change in retail operations qualified as a discontinuance under 39 U.S.C. § 404(d). In rejecting their claim, 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.” Order No. 436, PRC Docket No. A82-10, *Oceana Station* (June 25, 1982), at 7. The Commission held the “requirements of section 404([d]) do not pertain to the *specific building* housing the [P]ost [O]ffice; but rather are concerned with the provision of a facility within the community.” *Id.*, at 7 (emphasis added).

Following its decision in *Oceana Station*, the Commission provided further guidance when dismissing an appeal of the relocation of the Post Office in Wellfleet, Massachusetts. In that proceeding, the Postal Service had decided to move the Wellfleet Post Office from the center of the village of Wellfleet to a shopping center development approximately 1.2 miles away. The petitioners contended that the new location was actually within the neighboring village of South Wellfleet.<sup>4</sup> The Commission upheld the Postal Service position and characterized the Postal Service’s action as a relocation outside the scope of Section 404(d). The Commission explained:

If our record shows that the Postal Service is only relocating a [P]ost [O]ffice within a community, section 404([d]) does not apply and we must dismiss the appeal, since we have no jurisdiction. Section 404([d]) sets up

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<sup>3</sup> 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](http://www.vbgov.com/file_source/dept/comit/Document/vb_facts_and_figures.pdf).

<sup>4</sup> Wellfleet and South Wellfleet are both villages within the Town of Wellfleet, Massachusetts. Given that village boundaries were unclear, the Commission held that Wellfleet involved a relocation rather than a discontinuance.

a formal public decision[-]making process for only two types of actions concerning [P]ost [O]ffices – closing or consolidation. The meaning of “closing a [P]ost [O]ffice” as used in the statute is the elimination of a [P]ost [O]ffice from a community. The Postal Service has the authority to relocate a [P]ost [O]ffice within a community without following the formal section 404(d) proceedings.

Order No. 696, PRC Docket No. A86-13, *Wellfleet, Massachusetts* (June 10, 1986), at 7 (internal citations omitted).

More recently, the Commission affirmed that a relocation to another facility within the community was not a discontinuance when it dismissed an appeal of a relocation of a Post Office in Ukiah, California. In that proceeding, the Postal Service decided to move the Ukiah Main Post Office to the Ukiah Carrier Annex; the two locations were one mile from each other. The Commission found that after retail services were transferred to the Ukiah Carrier Annex, and in light of the one-mile distance between the locations, customers would “continue to have the same level of access to retail services in the community.” Order No. 804, Order Dismissing Appeal, PRC Docket A2011-21, *Ukiah, California* (August 15, 2011) at 4. As such, the Commission determined that the Postal Service’s action was a relocation, not a discontinuance, and consequently, was not subject to an appeal under section 404(d). *Id.*, at 4.

In Venice, despite participants’ concerns over the preservation of historic characteristics of the building, including the mural contained therein, the Commission held that the relocation of retail services to a carrier annex, located 400 feet away was not subject to an appeal under section 404(d). Order No. 1166, Order Dismissing Appeal, PRC Docket A2012-17, *Venice, California* (January 24, 2012), at 7. Furthermore, the Commission held that the Postal Service’s decision to relocate retail operations from Venice Post Office to the Venice Carrier Annex across the street was

consistent with 39 U.S.C. § 404(b)(3), which authorizes the Postal Service to “establish and maintain postal facilities of such character and in such locations, that postal patrons throughout the Nation will... have ready access to essential postal services.” *Id.*, at 8.

Similarly, in Santa Monica, the Postal Service decided to transfer retail operations from the Santa Monica Post Office to the Santa Monica Carrier Annex, located in the same community less than one mile away. The Commission found that postal customers will continue to have the same level of access to retail services in the community. Order No. 1588, Order Dismissing Appeal, PRC Docket A2013-1, *Santa Monica, California* (December, 19, 2012), at 5. The Commission dismissed the appeal, stating that the petitioners misinterpreted section 404(d) by applying it to the “elimination of a specific building in Santa Monica as opposed to the provision of a facility within the community.” *Id.* (internal citations omitted).

The Postal Service decision to transfer retail operations from the Berkeley MPO is analogous to the relocation actions described above. Here, the Postal Service has decided to relocate retail operations at the Berkeley MPO to an undetermined location within the community. The Postal Service assures the community and its customers that it will continue retail operations at Berkeley MPO until a suitable location within the same community is found and is ready for occupancy and use as a Post Office. As in the above cited dockets, after the Postal Service implements its decision, the community will maintain the same number of retail facilities and will continue to have the same level of access to retail services.

By filing a petition with the Commission, the petitioner argues that the Postal Service should have followed the procedural requirements of 39 U.S.C. § 404(d) and 39

C.F.R. § 241.3 as part of its decision to relocate the Berkeley MPO. But the procedures for a relocation are governed by 39 C.F.R. § 241.4, not 39 C.F.R. § 241.3.

Furthermore, the Petitioner did not allege any discontinuance action has taken place. He is protesting the potential sale of the building and, as explained in the final decision letter, the Postal Service has authority to sell the building housing the Berkeley MPO. Exhibit 1. Since the Berkeley MPO is property of the Postal Service and the Postal Service has the power to acquire, sell, and otherwise dispose of its real property or any interest therein, the Postal Service has the authority to sell the property housing the Berkeley MPO. Postal Reorganization Act, Public Law 91-375, and 39 U.S.C. §401(5). The sale of the building is not, on its own, grounds for Commission jurisdiction under section 404(d), which is limited to final determinations to close or consolidate a Post Office.

In sum, this appeal concerns the relocation of a Post Office. Thus, 39 U.S.C. § 404(d) and 39 C.F.R. § 241.3 do not apply and the Commission lacks jurisdiction. Accordingly, the Commission should dismiss the appeal.

#### CONCLUSION

For the reasons stated, the United States Postal Service respectfully requests that the Postal Regulatory Commission dismiss this appeal for lack of jurisdiction.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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August 9, 2013

TOM A. SAMRA  
VICE PRESIDENT, FACILITIES



July 18, 2013

## **Final Determination Regarding Relocation of Retail Services in Berkeley, California**

In accordance with the procedures set forth at 39 C.F.R. 241.4(6), this is the final review determination of the Vice President, Facilities of the United States Postal Service ("Postal Service") with respect to the Postal Service's April 19, 2013 decision regarding relocation of retail services at the Berkeley Post Office located at 2000 Alston Way, Berkeley, CA ("Berkeley Post Office").

The Postal Service announced its decision to relocate retail services on April 19, 2013, and subsequently received requests for review from Congresswoman Barbara Lee, California State Senator Loni Hancock, California State Assemblymember Nancy Skinner, Mayor Tom Bates, Office of the City Attorney of Berkeley, The Berkeley Architectural Heritage Association, National Trust for Historic Preservation, National Post Office Collaborate, Ford & Huff Attorneys at Law, Save the Berkeley Post Office, the Gray Panthers of the East Bay, and approximately fifty postal customers (collectively referred to as "concerned parties"). In making this final determination, I have obtained the views of the Postal Service decision maker, reviewed relevant parts of the project file, and carefully considered all the concerns expressed in each of the concerned parties' requests for review of the relocation decision. While I am sympathetic to the concerns raised by the concerned parties, for the reasons set forth below, I will not set aside the Postal Service's April 19<sup>th</sup> decision.

The concerns raised by the concerned parties can be grouped into the following areas: (1) potential community impact based on historic significance and convenient location of present facility, (2) alleged failure to comply with certain federal statutes, regulations, executive orders, and an inter-agency agreement, along with apprehension about the future of the mural in the Berkeley Post Office, (3) the authority of the Postal Service to sell the property, and (4) alleged faulty financial analysis of the relocation. Each of these issues is addressed below:

1. Potential Community Impact. I understand and appreciate the comments expressing heartfelt attachment to the Berkeley Post Office building, based on its historic role, architecture, and artwork, and its employees as a part of the community. I also understand the desire to have a convenient location to access postal services, especially for senior citizens, persons with limited mobility, and

local businesses. While the Postal Service takes pride in its role in every community, its dire financial circumstances force us to pursue every opportunity to reduce costs and generate revenue, in particular at under-utilized locations, such as the Berkeley Post Office. Accordingly, the Postal Service will pursue relocation opportunities for the Berkeley Post Office, keeping convenience in mind, as well as a possible sale transaction that could include a lease-back of a portion of the premises to the Postal Service so as to allow existing Postal Service retail services to remain in place. The Postal Service will only consider relocation sites that are suitable for our customers and meet all postal operation needs. The goal is to identify a location as close to the current site as possible and within the same ZIP Code, where the Postal Service expects to continue to provide the same services during the same operating hours as it provides at the existing site. Additionally, the Postal Service has greatly expanded access to postal products and services in recent years. Almost 40 percent of our total retail revenue comes from this expanded access, including stamps in ATMs, supermarkets and drug stores and shipping services in office supply stores. Nearly all of the services available in the Berkeley Post Office are available online via usps.com. After issuing this final review determination, the Postal Service will undertake a site selection process that includes notice to officials and the public of potential alternative sites and solicitation of comments. The Postal Service expects the current employees will continue to be employed at the new site or in the down-sized existing location.

2. Compliance with Certain Federal Statutes, Regulations, Executive Orders and Inter-Agency Agreement; Concern for the Mural. Some concerned parties alleged that the Postal Service failed to comply with the National Environmental Policy Act and its corresponding federal regulations (collectively, "NEPA") and the National Historic Preservation Act and its corresponding federal regulations and Executive Orders (collectively, "NHPA"). Some concerned parties expressed related apprehension about the future of the mural located in the Berkeley Post Office and for the public's continued access to it. Regarding the NEPA, some alleged that NEPA required the Postal Service to prepare an environmental impact statement (EIS) prior to announcing its April 19<sup>th</sup> relocation decision. However, as that decision noted, the Postal Service has not yet identified the potential relocation site and thus it is premature to evaluate potential impacts. The Postal Service will comply with all applicable statutory and regulatory requirements under NEPA at the appropriate time. Regarding the NHPA, the Postal Service complies with Section 106 and will engage in the consultation process prior to any sale of the Berkeley Post Office. With respect to the mural located inside the building, the Postal Service will retain ownership of the mural regardless of any sale of the building itself. The Postal Service will enter into a written agreement with the new owner to ensure the preservation of, and public access to, the mural. A concerned party voiced their opinion that the U.S. Postal Service did not consult with the General Services Administration ("GSA") as set forth in an agreement between the two federal agencies. Circumstances have changed significantly since 1979 when that inter-agency agreement was made. The Postal Service works with GSA and will provide any

required inter-governmental notices at the appropriate time. Finally, a concerned party alleged that the Postal Service failed to follow 39 U.S.C. § 404(d), which sets forth factors that should be taken into consideration when determining whether to close or consolidate a post office. This concern is misplaced as the Berkeley Post Office's retail services are being relocated, not closed or consolidated, to a yet to be determined replacement facility in the same ZIP code.

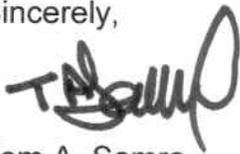
3. Authority to Sell. Some concerned parties feel that the Postal Service has no right or authority to sell a property that was built using taxpayer dollars. The April 19, 2013 decision and this final determination relate to the relocation of retail services from the current Berkeley Post Office. Nevertheless, the Berkeley Post Office is the property of the Postal Service by virtue of the provisions of the Postal Reorganization Act, Public Law 91-375, and as specifically noted in the Federal Register, Vol. 36, No. 173 at page 17920. By federal statute at 39 U.S.C. §401(5), the Postal Service has the power to acquire, sell, and otherwise dispose of its real property or any interest therein. The Postal Service acknowledges the history of the Berkeley Post Office, but given the Postal Service's financial status and operational needs, it is no longer practical to retain ownership of this property, particularly since the Postal Service operations only require approximately 4,000 square feet of the approximately 57,000 square feet of space in the building.
4. Financial Analysis. Several concerned parties questioned the financial advantage of selling the Berkeley Post Office and relocating to leased space with a rental burden, as well as the financial burden on mailers to commute to a different location to conduct their postal business. Some concerned parties suggested alternatives, including outleasing excess space and offering additional services, in order to increase postal revenue. However, the Postal Service's mission is to provide postal services in an efficient manner, and increasing its role as a landlord diverts from a proper focus on that core mission. In addition, the Postal Service is legally restrained from offering additional non-postal services. Several concerned parties also correctly noted that the Postal Service's current financial condition is due in large part to the Congressional mandate imposed in 2006 that requires the Postal Service to pre-fund retiree benefits, a burden that is not placed on other federal agencies. The concerned parties suggest that the Postal Service should have a one-year moratorium on the sale of postal assets in order to give Congress an opportunity to fix the underlying cause of the problem. Regrettably, legislation to relieve the Postal Service's financial burden has not been achieved after several Congressional sessions. The Postal Service's financial analysis regarding the Berkeley Post Office supports the relocation of retail services, with a potential sale of the property, as the best alternative.

While the Postal Service is sensitive to the concerns expressed and the impact of this decision on its customers, the Berkeley community, and the concerned parties, I am satisfied the April 19<sup>th</sup> relocation decision properly took into account community

input and is consistent with Postal Service objectives. Under the circumstances here, the Postal Service must make any feasible change to right-size its space, reduce costs, and potentially generate revenue. The Postal Service must, in order to be self-sustaining, make decisions that ensure it provides adequate and affordable postal services in a manner that is as efficient and economical as possible.

In reaching this decision, I considered all of the public input received, but the concerns expressed do not outweigh the dire financial circumstances facing the Postal Service. Accordingly, I conclude that there is no basis to set aside the April 19, 2013 decision regarding relocation of the Berkeley Post Office. This is the final determination of the Postal Service with respect to this matter, and there is no right to further administrative or judicial review of this decision.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tom A. Samra', with a stylized flourish at the end.

Tom A. Samra  
Vice President

English Customer USPS  
Service Mobile



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## Exhibit 2 A2013-9

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	0.6 mi <b>THE CAL STUDENT STORE</b> › 108 MARTIN LUTHER KING JR SPC 4504 BERKELEY, CA 94720-4504  800-ASK-USPS® (800-275-8777)	<b>Stamp booklets only.</b>	
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	0.7 mi <b>WELLS FARGO BANK</b> › 1550 SHATTUCK AVE BERKELEY, CA 94709-1517  800-ASK-USPS® (800-275-8777)	<b>Stamp booklets only.</b>	
	0.7 mi <b>ANDRONICO'S MARKET</b> › 1550 SHATTUCK AVE BERKELEY, CA 94709-1517  800-ASK-USPS® (800-275-8777)	<b>Stamp booklets only.</b>	
	0.7 mi <b>NORTH BERKELEY</b> › 1521 SHATTUCK AVE BERKELEY, CA 94709-9991  800-ASK-USPS® (800-275-8777)	Mon-Fri Sat-Sun	9:00am - 5:00pm Closed
	0.8 mi <b>WALGREENS</b> › 2801 ADELIN ST BERKELEY, CA 94703-2204  800-ASK-USPS® (800-275-8777)	<b>Stamp booklets only.</b>	
	0.8 mi <b>CVS</b> › 1451 SHATTUCK AVE BERKELEY, CA 94709-1410  800-ASK-USPS® (800-275-8777)	<b>Stamp booklets only.</b>	
	0.9 mi <b>SAFEWAY</b> › 1444 SHATTUCK AVE BERKELEY, CA 94709-1411  800-ASK-USPS® (800-275-8777)	<b>Stamp booklets only.</b>	
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