

RECEIVED

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

2013 NOV 19 P 2:23

POSTAL REGULATORY
COMMISSION
IN CHIEF OF THE STAFF

Stamford Post Office
Stamford, Connecticut

Docket No.: A2014-1

**BRIEF IN SUPPORT OF PETITIONER'S APPEAL
(November 18, 2013)**

On September 18, 2013, the United States Postal Service ("USPS") gave notice of its proposed closure of the Atlantic Street post office in Stamford, Connecticut by two days' notice posted on the outside doors of the post office. The Stamford post office was closed at the end of the day on September 20, 2013. Postal customers were directed to other facilities on a temporary basis while a new facility was to be found for a downtown Stamford post office that would be substantially reduced in size. The USPS calls the Stamford, Connecticut post office a station, but the statutory framework for post offices does not delineate postal facilities that accept mail from the public as anything other than a post office.

In August, 2010, the USPS had one public hearing on its proposal to sell the Stamford post office, calling the proposed transaction a relocation of the Stamford post office. In October, 2013, after a Federal lawsuit was filed by the Petitioner and two other nonprofit organizations (National Post Office Collaborate, et. al. vs. USPS et. al. Civil Action No. 3:13-CV-01406 (JBA), Federal District Court, District of Connecticut, filed on September 25, 2013), the USPS abandoned its position that the proposed sale was a relocation and stated the original notices posted by it were incorrect and that the process

was a “temporary suspension” under postal service statutes. The USPS so notified customers by new notices placed on the now closed post office in October, 2013. Petitioner has already argued in its Response to the USPS’s Motion to Dismiss that the only logical explanation for the USPS’s actions can be that it is a closure of the post office without the required sixty day notice and public hearing to allow postal customers due process on a change of postal service. This is the conclusion based on reading the regulatory statutes of the post office that govern “closures or consolidations” , “emergency suspensions” and “relocations” of post offices.

THE USPS’S MOTION TO DISMISS

Both the Public Representative and this Petitioner have filed Responses to the USPS Motion to Dismiss taking the position that the actions of the USPS with respect to the Stamford downtown post office constitute a defacto closure without following the proper statutory and PRC requirements to “close” or “consolidate” a post office. The action of the USPS with respect to the Stamford, Connecticut post office is a de facto closure or consolidation. Please refer to the Petitioner’s arguments in the Response to the Motion to Dismiss of the USPS that: (i) this case is ripe for the Commission to hear, (ii) involves the violation of the USPS’s own handbook rules for a closure or consolidation, and (iii) has violated the intent of Congress with respect to post office closures and the Advisory Opinion of this very Commission on how all post office closures or consolidations must be handled administratively.

THE ACTIONS OF THE POSTAL SERVICE IN CLOSING THE STAMFORD POST OFFICE ARE ARBITRARY AND CAPRICIOUS, VIOLATE CONGRESSIONAL STATUTORY REQUIREMENTS AND WERE TAKEN “WITHOUT OBSERVANCE OF PROCEDURE REQUIRED BY LAW”.

In 2009 the Postal Service requested an advisory opinion from the Commission before implementing a focused, system wide application of its station and branch discontinuation policy. See, PRC Advisory Opinion Concerning the Process for Evaluating Closing Stations and Branches. Docket No. N2009-1. This docket indicates that the postal service maintained a list of stations and branches that it would consider for closure. *Id.* at 6.

In this Advisory Opinion this Commission stated that:

The Commission’s authority is to ensure that policies and procedures established by the Postal Service governing consolidations and closures comport with title 39. In addition, the Commission retains limited authority through an appeal process to review certain consolidations and closings. (Footnote 24: The Commission has repeatedly rejected Postal Service argument that the title 39 section 404(d) approval process is applicable only to Post Offices. See Docket No. A2006-1, Order Denying Postal Service Motion to Dismiss and remanding for Further Consideration, September 29, 2006, at 5-12). The Commission may set aside Postal Service findings and conclusions concerning individual consolidation or closing determinations that are “(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. See 39 U. S. C. Section 404(d)(5). In effect, this authority is used to ensure that the Postal Service adheres to a closing and consolidation policy that provides due process and minimum periods of meaningful notice to the public. *Id.* at 13.

The Commission concluded that when any post office retail location, whether defined as a post office, station or branch under post office regulations 39 CFR Section 241.2(a)(1), is subject to closure or consolidation, the Postal Service must still comply with the statutory notice and due process requirements of Title 39. “The Commission finds that 10-day time frames do not provide sufficient notice and do not provide an adequate opportunity for public comments. (footnote omitted). The Commission finds that there should be no difference between the notice

the Postal Service provides to patrons of stations, branches or Post Offices. The Postal Service contention that the applicable statute does not specifically refer to stations and branches does not go to the merits of this decision. The 60-day notice period statutorily required by 39 U. S. C. Section 404(d)(1) before post offices may be closed **was established by Congress as an appropriate notice and response period for citizens whose retail postal facility may be closed.** (emphasis added).

The USPS has, through its handbook, decreed post offices to fit into two new categories beside “post office”, branches and stations. But the USPS may not reclassify post offices in violation of the statute passed by Congress that requires a notification to customers, and the study of the affects upon service levels, the customers and employees before a post office is closed.

Congress enacted 39 U. S. C. 405 (d) for a reason. The USPS cannot abrogate the clear intent of Congress by writing a handbook provision that contradicts that mandate.

For the reasons set forth herein, Kaysay H. Abrha respectfully requests that the Commission order the USPS to suspend the closure of the Stamford, Connecticut downtown post office and to comply with the statutory provisions that are a prerequisite to any closing of that post office.

Respectfully submitted,

/s/ Drew S. Backstrand

Drew S. Backstrand
Attorney at Law
60 South Sixth Street, Suite 2535
Minneapolis, MN 55402
Minnesota No. 0147904
973-830-2460
(cell) 612-670-0569

Drew S. Backstrand
Attorney at Law
60 South Sixth Street, Suite 2535
Minneapolis, Minnesota 55402
612-465-0260
(fax) 612-455-1022

Via Federal Express

November 18, 2013

Postal Regulatory Commission
901 New York Avenue NW, Suite 200
Washington, D. C. 20268-0001

Re: Stamford Post Office,
421 Atlantic Street
Stamford, Connecticut 06904.

Re: Appeal of the Postal Service's Closure of the Stamford CT Post Office
Docket No. A2014-1.

Dear Commissioners:

I am filing the attached Brief in Support of Petitioner's Appeal regarding the above matter.

Very truly yours,


Drew S. Backstrand

cc: Kaysay H. Abrha