

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

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POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

Complaint of Joseph B. Hurwitz and Steven  
G. Kimbell, COMPLAINANTS

Docket No. C99-3

OPPOSITION OF UNITED STATES POSTAL SERVICE  
TO COMPLAINANTS' MOTION FOR RECONSIDERATION  
(July 2, 1999)

On April 9, 1999, the Postal Rate Commission received a document captioned "Joseph B. Hurwitz, et al., Class-Action Complaint of Wrongful Change of Postal Address and Motion to Rescind the 'ZIP Code Boundary Review Process' Survey Guidelines" filed by Joseph B. Hurwitz and Steven G. Kimbell. By letter dated that same day, the Office of the Secretary, Postal Rate Commission, designated the docket number above and advised the General Counsel, United States Postal Service, of the complaint's filing under title 39, United States Code § 3662.

On June 15, 1999, upon the motion of the Postal Service, the Commission issued Order No. 1254 dismissing the Complaint. On June 25, 1999 Complainants filed a Motion For Reconsideration Of Order No. 1254 Dismissing Complaint.

Complainants now raise arguments advanced (and apparently rejected) previously in federal district court, involving the allegedly capricious application of the Postal Service's Zip Code Boundary Review Process in the case of Elkridge, Maryland. Motion at 1-2, Exhibit 1. Complainants assert that in the case of Elkridge, a ZIP Code boundary change was made only after repeated efforts (ten attempts) by the Elkridge residents who sought the change. *Id.* Complainants further allege that Elkridge "to this

day has no knowledge of the illicit memorandum, the Survey Guidelines.”<sup>1</sup>

Complainants appear to assert that the Postal Service acted arbitrarily in the case of Elkridge, implying that the Postal Service did not follow its regulations in that case.<sup>2</sup>

Motion at 2. Complainants repeat their allegation that certain Postal Service regulations (presumably referring to the Survey Guidelines) “have not been implemented properly.” *Id.* See also Motion at 3.

Complainants go on to raise a number of issues alluded to previously in their Complaint. Complainants allege that the Postal Service entertains ZIP Code boundary changes only where it determines it will “profit by said changes.” *Id.* at 2. Complainants assert that the Postal Service only uses a survey process where the changes sought are “beyond those that positively affect mail delivery efficiencies.” *Id.* Complainants reiterate vague allegations of criminal conspiracy.<sup>3</sup> Complainants conclude with a criticism of dicta in the Order, stating that the Commission’s suggestion of potential

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<sup>1</sup> Since Complainants do not place these events in a chronological context, it is impossible to determine whether the Survey Guidelines were in effect during them.

<sup>2</sup> Complainants do not allege any personal connection to the Elkridge events and thus have not established standing to challenge the outcome in Elkridge. However, It appears that Complainants do not intend to challenge this outcome, but merely attempt to contrast the Elkridge events with those involving their own ZIP Code adjustment.

<sup>3</sup> Complainants include puzzling non-sequiturs alleging that “non-governmental defendants cited in the Complaint furnished false information to the Postal Service,” preceded by partial quotation of 18 U.S.C. § 1001, and followed by excerpts from Maryland court decisions dealing with conspiracy. Motion at 3. The Postal Service is at a loss to respond to these assertions, other than to point out that there are no “non-governmental defendants” in the instant docket, no definite statement of the false information thought to have been provided, no showing of relevance of Maryland case law, no description of the alleged conspiracy vaguely alluded to in the Motion, and no indication of Commission jurisdiction over such matters. The Postal Service likewise is perplexed by Complainants’ discussion of allegations of fraud against non-governmental defendants in prior federal litigation (Motion at 5), as no nexus to the issues before the Commission can be discerned from Complainants’ pleadings.

improvement in the Boundary Review Process 1) should have been presented in a public report and 2) is “morally repugnant and legally nonsensical” since it constitutes a suggestion that the Postal Service “more gently rape the people.” Motion at 5.

In dismissing the Complaint, the Commission agreed with the Postal Service that the present Complaint does not satisfy the requirements for a Commission hearing, as “the alteration of ZIP Code boundaries is clearly an operational matter within the exclusive jurisdiction of Postal Service management, in compliance with the policies set forth in Title 39.” Order No. 1254. Complainants have stated no grounds upon which the Order can be disturbed. The Commission has already been presented with allegations of conspiracy, of failure to properly promulgate and implement regulations pertaining to ZIP Code boundary adjustments, and of harm to business mailers as a result of ZIP Code boundary changes, and found these grounds insufficient.

The only elements in the Motion for Reconsideration that can be considered new are vague references to ZIP Code changes in Elkridge, Maryland. These allegations apparently were submitted in response to the Commission’s statements in Order No. 1254 that the Commission could assert some jurisdiction over operational matters of the Postal Service “if the circumstances indicate that a particular Service operational policy is arbitrarily discriminatory on its face, or implemented in an arbitrarily discriminatory manner.” Order No. 1254 at 10.

The Postal Service does not concede that the Commission has jurisdictional authority over purely operational matters even in such circumstances. Nevertheless, as the Commission held in Order No. 1254, the patently arbitrary discrimination mentioned as a potential ground for jurisdiction clearly is absent here, even if all of Complainants’ assertions (including those relating to Elkridge) are accepted as true. The circumstances of the Elkridge and Montgomery Village ZIP Code changes recounted by Complainants do not demonstrate patently arbitrary discrimination in policy or implementation. At most, Complainants describe two instances in which community

groups sought ZIP Code boundary adjustments, and eventually had their requests granted.<sup>4</sup> Complainants' new allegations do not warrant reconsideration.

When all is said and done, the Commission was correct to conclude that Complainants have failed to establish the necessary prerequisites for jurisdiction under § 3662. Complainants failed to allege that the Postal Service is charging rates not in conformity with the policies set out in Title 39; their allegations do not involve rates. They have not made a showing that they are not receiving postal service in conformity with the policies in Title 39, in fact, they have not established that any change in postal service has occurred. Furthermore, Complainants' allegations essentially concern application of operational policy involving a particular locality, a policy whose terms and implementation are not patently arbitrary or discriminatory. The Commission properly

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<sup>4</sup> Although Complainants assert that the Elkridge change was resisted by the Postal Service and was only approved after several attempts and the application of political pressure, these circumstances, even if true, fail to support any claim that the Postal Service acted arbitrarily and in a discriminatory manner in granting the changes sought by Montgomery Village community representatives. One would not expect in the day-to-day administration of ZIP Code boundaries that different Postal Service officials, in different circumstances, would respond to different requests in an identically timely manner. Moreover, if the details of such adjustments were routinely subjected to Commission review as Complainants' suggest, the adverse consequences to Postal Service operations are manifest. In order to carry out its statutory functions, such operational matters must remain within the exclusive province of the Postal Service.

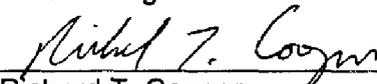
exercised its discretion in dismissing the Complaint, and that exercise of discretion should not be disturbed.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

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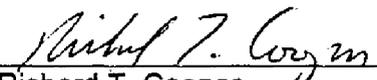
**CERTIFICATE OF SERVICE**

I hereby certify that, in accordance with section 12 of the Rules of Practice, I have this day served the foregoing document upon:

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