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ORDER NO. 1257  
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UNITED STATES OF AMERICA  
POSTAL RATE COMMISSION  
WASHINGTON, D.C. 20268-0001

POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

Before Commissioners: Edward J. Gleiman, Chairman;  
W.H. "Trey" LeBlanc III, Vice Chairman;  
Dana B. Covington, Sr.; Ruth Y. Goldway; and  
George A. Omas

Complaint of Joseph B. Hurwitz, et al.

Docket No. C99-3

ORDER DENYING RECONSIDERATION

(July 22, 1999)

On June 25, 1999, Complainants Joseph B. Hurwitz and Steven G. Kimbell filed a motion for reconsideration of PRC Order No. 1254, which had dismissed their April 9, 1999 Complaint against the Postal Service. Motion for Reconsideration of Order No. 1254 Dismissing Complaint (June 15, 1999) ("Motion for Reconsideration"), June 25, 1999. The Complaint, brought under 39 U.S.C. § 3662, challenged the Postal Service's institution of a new ZIP Code specifically for the Montgomery Village area of Gaithersburg, Maryland. PRC Order No. 1254 at 1. Complainants, who are residents and owners of home-based businesses in Montgomery Village, had argued that the Service's ZIP Code change for that area was based on illegally promulgated and implemented survey guidelines. *Ibid*.

The Commission held that alteration of ZIP Code boundaries is an operational matter within the exclusive jurisdiction of Postal Service management, and does not merit Commission consideration unless "arbitrarily discriminatory on its face or implemented in an arbitrarily discriminatory manner." PRC Order No. 1254 at 9-10.

The Commission found that, even granting that all facts alleged by Complainants were true, the circumstances did not indicate arbitrary discrimination or other violations of national postal policy. *Id.* at 10.

In the Motion for Reconsideration, Complainants renew earlier allegations of criminal conspiracy and actionable fraud resulting in harm to certain business mailers, and Postal Service failure to properly promulgate and implement ZIP Code boundary regulations.<sup>1</sup> Motion for Reconsideration at 2-5. Complainants maintain that the Postal Service lacks appreciation for communities' identity and addressing concerns and capriciously applies its ZIP Code Boundary Review Process, as evidenced by the numerous attempts needed by Elkridge, Maryland residents to achieve a desired ZIP Code boundary change. *Id.* at 1, Exhibit 1.

On July 2, 1999, the Postal Service filed in opposition to Complainants' Motion for Reconsideration. Opposition of United States Postal Service to Complainants' Motion for Reconsideration ("Opposition"). According to the Service, Complainants' Motion for Reconsideration generally raises issues which already have been considered and rejected by both a federal district court and the Commission. Accordingly, "Complainants have stated no grounds upon which the Order can be disturbed." Opposition at 3. As for Complainants' assertion of patently discriminatory and arbitrary action by the Postal Service in both the Elkridge case and the matter at hand, the Service in the first instance refuses to concede the Commission's jurisdictional authority under such circumstances. That notwithstanding, and even granting that Complainants' assertions are true in both cases, the Service maintains that the requisite patent discrimination in either policy or implementation is absent. *Id.* at 3-4. Therefore, reconsideration of the Complaint by the Commission is not warranted. *Ibid.*

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<sup>1</sup> Complainants allege that ZIP Code boundary changes are considered by the Postal Service only when the Service stands to gain financially from said changes. Motion for Reconsideration at 2. Yet, no explanation is offered as to how the Service might actually profit from a ZIP Code modification, particularly in light of the cost associated with the nationwide adjustment of internal Service systems to reflect the ZIP Code change.

It is a well-recognized precept of administrative law that an agency retains the discretion to grant reconsideration of a decision upon petition, generally according to its particular rules of practice. *Trujillo v. General Elec. Co.*, 621 F.2d 1084, 1086 (10<sup>th</sup> Cir. 1980). The Commission's Rules of Practice and Procedure do not specifically provide for reconsideration of Commission orders in complaint cases. However, the Commission traditionally has viewed such motions in a liberal manner, in accordance with administrative law principles. These principles suggest that an agency may reconsider an opinion if: (1) the decision is based on erroneous legal or factual assumptions; or (2) on a petitioner's presentation of new facts or legal evidence previously unavailable which, if true, would clearly mandate a change in the result. See, e.g., *Greene County Planning Board v. Federal Power Commission*, 559 F.2d 1227, 1233 (2d Cir. 1976), *cert. denied*, 434 U.S. 1086 (1978). Significantly, a motion for reconsideration may not be used merely as a vehicle to reargue issues determined by the challenged decision. *Paskon v. Salem Memorial Hosp. Dist.*, 806 S.W.2d 417, 424 (Mo. App. 1991), *rehearing and/or transfer denied* (Mar. 11, 1991), *cert. denied*, 502 U.S. 908 (1991).

In the Motion for Reconsideration before the Commission, Complainants raise issues which both the Commission and a federal district court have considered and rejected in prior decisions. Complainants' continuing allegations of a conspiracy to change the Montgomery Village ZIP Code, as well as the Service's failure to appropriately promulgate and implement ZIP Code boundary adjustment regulations, offer no new basis warranting modification of PRC Order No. 1254. Likewise, Complainants identify no legal or factual error on the Commission's part which would mandate reconsideration of the Commission's earlier decision.

The one element of Complainants' Motion for Reconsideration which may be construed as novel is their reference to the Elkridge, Maryland ZIP Code changes. However, the facts as recounted by Complainants, even in combination with the circumstances surrounding the Montgomery Village ZIP Code change, do not indicate patently arbitrary discrimination or the violation of national postal policy meriting

Commission intervention. Thus, while the Commission recognizes Complainants' dissatisfaction with the outcome of the Boundary Review Process — and further reiterates that the Postal Service should reexamine the process to ensure the inclusion of all interested parties — there is no evidence that the Postal Service has failed to provide service consistent with Title 39 policies in this instance.


In light of the above considerations, the Motion for Reconsideration is denied.

It is ordered:

The Motion for Reconsideration of Order No. 1254 Dismissing Complaint, filed June 25, 1999, is denied.

By the Commission.

(S E A L)

  
Margaret P. Crenshaw  
Secretary