

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

Careywood, Post Office)
Careywood, Idaho)
_____)

Docket No. A2015-2

**PUBLIC REPRESENTATIVE'S OPPOSITION
TO THE POSTAL SERVICE'S MOTION TO DISMISS**

I. Introduction

On March 19, 2015, Marrion E. Newsam Banks filed an appeal of the closing of the Careywood, Idaho Post Office, and shortly thereafter filed a request to suspend the closure pending the Commission's review of the appeal.¹ On March 27, 2015, the Postal Service moved to dismiss the appeal on the basis that the Commission lacks subject matter jurisdiction to hear the appeal because the closure of a contract postal unit (CPU) is outside the scope of 39 U.S.C. § 404(d).² For the reasons discussed below, the Public Representatives urges the Commission to deny the Postal Service's Motion and remand the closure of the Careywood CPU.

II. Background

Careywood, Idaho is a small rural community in Bonner County with a population of approximately 500 residents. On February 20, 2015, the Postal Service notified postal customers that the Careywood CPU would be permanently closed effective March 31, 2015 and post office box customers would be relocated to the Athol Post

¹ See Petition for Review Received from Marrion E. Newsam Banks, March 19, 2015 (Appeal); Errata to Petition for Review Received from Marrion E. Newsam Banks, March 24, 2015. The Public Representative notes that the Postal Service has in the past agreed to suspend the closure of a post office pending the Commissioner's decision on appeal. The Postal Service did not agree to suspend the closure in this matter.

² United States Postal Service Motion to Dismiss Proceedings and Response in Opposition to Petitioner's Application for Suspension, March 27, 2015, at 1 (Motion).

Office. Appeal at 1. The Athol Post Office is located 7.5 miles south in Kootenai County, Idaho.

III. The Commission has Jurisdiction over the Careywood Appeal where the Careywood CPU is the Sole Source of Postal Services in the Community.

39 U.S.C. § 404(d) was enacted to protect the general public by requiring the Postal Service to comply with standard procedures and consider certain statutory criteria prior to closing a post office. Section 404(d) requires the Postal Service provide sufficient notice to allow the postal customers an opportunity to be heard prior to the post office closing. These statutory provisions provide assurance that the Postal Service will consider closing post offices in a fair manner with the interests of the community in mind. Should the Postal Service fail to comply with the proper closing procedures, section 404(d) provides postal customers the right to appeal to the Commission.

The Postal Service's Motion interprets the Commission's authority to hear appeals of post office closings in a manner that is inconsistent with longstanding Commission precedent. In *Knob Fork*, the Commission held that the "reasonable reading of section 404(b) is that it is to apply whenever the Postal Service proposes to close or consolidate a community's retail postal facility. The public generally describes these facilities as 'post offices.'"³ The Commission decisions since *Knob Fork* have continued to apply the procedural and appeal rights of section 404(d) to CPO and CPU facilities when they are "the sole source of postal services to a community."⁴ This carve-out means in practice that most CPUs will not qualify as "post offices" under section 404(d) because over half of the nation's "CPUs are located less than 2 miles from the nearest post office."⁵ In past appeals, the Commission has found that CPUs

³ Docket No. A83-30, Commission Opinion Remanding Determination for Further Consideration – 39 U.S.C. § 404(b)(5) (January 18, 1984).

⁴ Docket No. A94-3, Commission Opinion Affirming Decision Under 39 U.S.C. § 404(b) (March 15, 1994) (Schley, C. and LeBlanc, C. dissenting); see also Docket No. A94-1, Commission Opinion Affirming Decision Under 39 U.S.C. § 404(b) (February 4, 1994); Docket No. A94-8, Commission Opinion Remanding Decision Under 39 U.S.C. § 404(b) (August 3, 1994); Docket No. A2012-88, Order Dismissing Appeal (March 21, 2012) at 6 (Order No. 1293) (denying the appeal where the CPO was not the "sole source" of postal services in the community).

⁵ Government Accountability Office, Contract Postal Units: Analysis of Location, Service, and Financial Characteristics, GAO-13-14, November 14, 2012.

with alternative post offices within distances of 1.5 miles,⁶ 1.7 miles,⁷ and 1 mile⁸ could not be considered the “sole source” of postal services to qualify for section 404(d) notice and procedural rights.

Although the Commission’s jurisdiction over appeals of CPU closures is limited, the Commission has subject matter jurisdiction to hear this appeal because the Careywood CPU is the “sole source” of postal services in the community. Most CPUs will never meet this test; however, the Careywood CPU meets this narrow exception and its closure is subject to the notice and procedural requirements set forth in 39 U.S.C. § 404(d).

The appeal, letters, and petitions filed in this matter clearly support a finding that 1) Careywood is a distinct community; and 2) the closure of the Careywood CPU eliminates the sole source of postal services in that community. U.S. Senator Mike Crapo submitted a letter in support of the appeal and filed a petition containing over 500 signatures from the community.⁹ Senator Crapo stated:

A post office has been in Careywood for over one hundred years, and the current facility slated for closure has been in operation since 1933. There is a strong need for reliable postal services in this community and significant concerns have been shared with me regarding the impact and expenses that will be levied on residents with the closure of the Careywood facility. *Id.*

The Bonner County Board of Commissioners submitted a letter supporting the appeal of the Careywood CPU closure, further confirming that the “Careywood Post Office is the heart of this small rural community and its closure will place the burden of many more miles of travel, valuable time and the associated costs involved.”¹⁰

Given the record presented in this appeal, it is clear that Careywood qualifies as a separate and distinct community from Athol. The appeal demonstrates that the Athol Post Office is located in a different community, in a different county, with different emergency services and court services. Appeal at 2. The Athol Post Office is located

⁶ Docket No. A2010-3, Order Dismissing Appeal, June 22, 2010.

⁷ Docket No. A2007-1, Order Dismissing Appeal on Jurisdictional Grounds, October 9, 2007.

⁸ Docket No. A2012-88, Order Dismissing Appeal (March 21, 2012) at 6 (Order No. 1293).

⁹ Letter and Petition from Senator Mike Crapo Regarding the Careywood, Idaho Post Office, March 25, 2015.

¹⁰ Letter Received from the Bonner County Board of Commissioners Regarding the Careywood, ID Post Office, April 2, 2015.

approximately 7 miles from the Careywood location, making a minimum 14-mile round trip to Careywood residents seeking postal services. Further, the letters in support of the appeal support a conclusion that a 14-mile round trip to a different county is not a viable alternative source of postal services.

The facts presented by the appeal and supporting letters from the citizens of Careywood clearly demonstrate that the Careywood CPU is the “sole source” of postal services for the community. Accordingly, as the record satisfies the sole source exception, the Commission has subject matter jurisdiction over the appeal. The Public Representative recommends that the Commission deny the motion to dismiss and set aside the Postal Service’s determination to close the Careywood CPU as having been made without observance of the procedure required by law.

IV. It is in the Public’s Interest to Have Clear and Transparent Procedural Rights When the Postal Service Eliminates All Postal Services in a Community.

The Public Representative recognizes the concern for the Postal Service’s financial stability and its need to discontinue indebted postal facilities; however, these concerns must be balanced by the public’s interest in a transparent and clear process for discontinuing post offices. The current position taken by the Postal Service with respect to its closure of CPUs that are the sole source of postal services in a community is contrary to the public’s interest. Notably, in this matter, the Postal Service’s Motion does not provide any rationale for closing the Careywood CPU besides notifying the operator that the contract would not be renewed. Motion at 2. By choosing not to utilize the notice and procedure set forth in 39 U.S.C. § 404(d), the Postal Service has refused any type of evaluation, transparent or otherwise, by the public.

The main rationale set forth by the Postal Service for its interpretation of 39 U.S.C. § 404(d) is that the procedures under section 404(d) are incompatible with the “requirements of contract management, negotiation, and implementation.” Motion at 6. The Postal Service asserts that its ability to negotiate these contracts “would be harmed if parties had the option of appealing contractual decision.” *Id.* In making these arguments, the Postal Service ignores the realities of contracting in the commercial marketplace where it is standard for contracts to contain notice and procedural

requirements in the event of a termination or dispute. Even simple residential lease agreements often require a minimum of 60 days' notice prior to termination. The Postal Service's argument that it cannot accommodate the basic notice and procedural requirements of section 404(d) when closing a CPU that has existed for decades in a small rural community is simply not credible.

The Postal Service's Motion further confounds the issue of what is at stake under section 404(d) by implying that the procedural and appeal rights under section 404(d) would greatly hinder the Postal Service's operations.¹¹ The issue before the Commission is not whether the Postal Service can or should have closed the Careywood CPU or whether it should have negotiated a contract extension or modification. Rather, the issue is whether the Postal Service should have complied with the notice and procedural requirements under 39 U.S.C. § 404(d). The ultimate authority to close a post office rests with the Postal Service and the Commission "may not modify the determination of the Postal Service." 39 U.S.C. § 404(d)(5).

The procedural rights set forth in section 404(d) are important to the public's interest. Section 404(d) does not require the Postal Service to keep a post office open in perpetuity, but rather requires that the Postal Service comply with a process that benefits the community by providing transparency and predictability when a post office is to be closed. Such is the role and intent of the statute.

V. The Holding in Knob Fork Should be Maintained to Protect Rural Postal Customers

The decision in *Knob Fork* remains sound and viable even in the post-Postal Accountability and Enhancement Act (PAEA) environment. The holding in *Knob Fork* was narrowly tailored to apply section 404(d) to only those CPUs that represent the sole source of postal services in a community. If the Postal Service had complied with the *Knob Fork* decision, it would only have to provide the notice and procedural rights under section 404(d) for the small number of CPUs that meet the "sole source" test. The Postal Service's refusal to undertake any type of analysis prior to closing a CPU should

¹¹ See Docket No. A2012-88, Public Representative Answer in Opposition to United States Postal Service Motion to Dismiss Proceedings, December 21, 2011, for a detailed rebuttal of the Postal Service's argument that the "procedures of 39 U.S.C. § 404(d) are not compatible with the requirements of contract management, negotiation and implementation."

not be grounds to modify or overturn the Commission's decision in *Knob Fork*. The Public Representative believes that modifying the *Knob Fork* decision to exclude CPUs that are the sole source of postal services would have a disparate impact on rural communities.

The Postal Service is required to "provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining." 39 U.S.C. 101(b). Over the past decade, there has been a "broad-scale population shift from rural to urban America."¹² With that shift in population has come a shift in the amount of available services and opportunities remaining in rural areas. As a result of this trend, it has become a "key aim of Federal policy is to increase economic opportunities and overall standards of living in rural areas." *Id.* at section III. *Knob Fork* and its progeny address this policy concern by applying the procedural and notice rights of section 404(d) to closures of CPUs in rural areas that have no alternative postal services available.

It is the Public Representative's view that the decision in *Knob Fork* adequately addresses the concerns raised by the concurring opinion in *Alplaus*.¹³ *Knob Fork* does not require the Postal Service to comply with section 404(d) in communities where consumers have multiple means of retail access to Postal Services in the post-PAEA world. Although access to postal services has increased in various ways since the *Knob Fork* decision, rural areas do not enjoy the same access to these options as their urban counterparts.

As demonstrated by the substantial record on appeal, the Carewood community has no other options. The Public Representative urges the Commission to reaffirm the holding in *Knob Fork* and require the Postal Service to comply with section 404(d) when closing a CPU that acts as the sole source of postal services for a community.

¹² Strengthening the Rural Economy- The Current State of Rural America, Executive office of the President of the United States, Council of Economic Advisers, section II, available at <https://www.whitehouse.gov/administration/eop/cea/factsheets-reports/strengthening-the-rural-economy/the-current-state-of-rural-america>.

¹³ Docket No. A2012-88, Order Dismissing Appeal (March 21, 2012) (Order No. 1293) (Taub, R. concurring).

VI. Conclusion

The Public Representative respectfully submits the foregoing and requests that the Commission deny the Postal Service's Motion to Dismiss and remand the decision to close the Careywood CPO.

Respectfully Submitted,

/s Erica A. Barker

Erica A. Barker
Public Representative

901 New York Avenue, N.W.
Washington, D.C. 20268-0001
(202) 789-6819 (p)
(202) 789-6891 (f)
Erica.barker@prc.gov