

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Acting Chairman;  
Tony Hammond, Vice Chairman;  
Mark Acton;  
Ruth Goldway; and  
Nanci E. Langley

North Platte Post Office  
North Platte, Nebraska

Docket No. A2015-3

ORDER GRANTING MOTION TO DISMISS

(Issued June 18, 2015)

On April 20, 2015, the Commission docketed a petition for review of the closure of the North Platte, Nebraska main post office (North Platte) from Mayor Dwight Livingston (Petitioner).<sup>1</sup> In Order No. 2449, the Commission gave notice of the appeal, designated a Public Representative, directed the Postal Service to file the administrative record or a responsive pleading, and provided an opportunity for interested persons to submit comments.<sup>2</sup> On May 1, 2015, the Postal Service filed a motion to dismiss the

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<sup>1</sup> Petition for Review Received from Mayor Dwight Livingston Regarding the North Platte, NE Post Office 69101, April 20, 2015 (Petition). The Petition was in the form of a letter, postmarked April 10, 2015.

<sup>2</sup> Notice and Order Accepting Appeal and Establishing Procedural Schedule, April 21, 2015, Order No. 2449.

proceedings concerning North Platte.<sup>3</sup> Petitioner filed a motion requesting additional time to respond to the Postal Service's Motion to Dismiss and file a Form 61,<sup>4</sup> and the Public Representative filed a response in support of the Motion to Dismiss.<sup>5</sup> On May 29, 2015, the Commission denied Petitioner's Request and ordered Petitioner to file his response to the Postal Service's Motion to Dismiss by June 8, 2015.<sup>6</sup> On June 8, 2015, Petitioner filed a response to the Motion to Dismiss again asking the Commission to compel the Postal Service to file an administrative record and deny the Motion to Dismiss.<sup>7</sup> The Commission did not receive comments from any other interested persons.

The Commission finds the Postal Service's action regarding North Platte to constitute a relocation, over which the Commission has no appellate jurisdiction. The Postal Service's Motion to Dismiss is granted, and Petitioner's appeal is dismissed.

*Background.* On April 20, 2015, the Commission docketed an appeal of the Postal Service's decision to move retail services from the North Platte main post office located at 300 E. Third Street, North Platte, Nebraska, to the North Platte Processing Facility located at 1302 Industrial Avenue, North Platte, Nebraska. Petition at 1. The distance between the two is approximately 1.5 miles. Motion to Dismiss, Exhibit 2. Petitioner classifies the Postal Service actions regarding North Platte as a consolidation, and claims the Postal Service failed to follow the requisite statutory procedures under 39 U.S.C. § 404(d). Petition at 2.

On December 16, 2014, following an advance notice to the public, representatives of the Postal Service attended a public meeting of the North Platte City

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<sup>3</sup> Motion of United States Postal Service to Dismiss Proceedings, May 1, 2015 (Motion to Dismiss).

<sup>4</sup> Motion for Enlargement of Time to Respond to Motion to Dismiss and to File Form 61, May 8, 2015 (Petitioner Request).

<sup>5</sup> Public Representative Response in Support of United States Postal Service Motion to Dismiss Proceedings, May 11, 2015 (PR Response).

<sup>6</sup> Order No. 2519, Order Denying Petitioner's Motion For Enlargement of Time, May 29, 2015.

<sup>7</sup> Response to Motion to Dismiss, June 8, 2015, at 2 (Petitioner's Response).

Council, where they informed the community of the then proposed relocation and provided members of the public with an opportunity to comment. Motion to Dismiss, Exhibit 1. The Postal Service also provided for a written comment period. *Id.*

On February 4, 2015, the Postal Service issued an initial decision regarding the location. The initial decision stated that appeals of the decision could be submitted to the Postal Service's Vice President of Facilities until March 9, 2015. On March 12, 2015, after considering the appeals, the Postal Service issued a letter titled "Final Determination Regarding the Relocation of Retail Services," informing patrons of the relocation of postal retail services from the North Platte main post office to the North Platte Processing Facility. Motion to Dismiss, Exhibit 1. The Postal Service explained that moving the retail services from leased property to a Postal-owned facility will enable it to avoid significant expense. *Id.* The Postal Service assured customers it will continue to provide the same level of service for customers within the North Platte community. *Id.*

*Postal Service Motion to Dismiss.* The Postal Service contends the moving of retail services from the North Platte main post office to the North Platte Processing Facility 1.5 miles away constitutes a relocation of postal retail services within the North Platte community. Motion to Dismiss at 7, Exhibit 2. The Postal Service further asserts the Commission lacks jurisdiction to consider an appeal of a post office relocation, under 39 U.S.C. § 404(d). *Id.* at 3. It states the Commission has consistently held 39 U.S.C. § 404(d) does not apply to a relocation of retail operations to another facility within the same community. *Id.* at 3-4. Therefore, the Commission lacks the appellate jurisdiction to review an appeal of the relocation of North Platte's retail services. The Postal Service further contends it has complied with its relocation regulations. *Id.* at 8-9.

*Public Representative's Response.* The Public Representative agrees with the Postal Service that its actions with regard to North Platte constitute a relocation of services, and supports the Postal Service's Motion to Dismiss. See PR Response at 1, 5. He draws parallels to seven Commission decisions, illustrating how the Commission

has long held the relocation or rearrangement of retail facilities within a community does not constitute a closing or consolidation, and thus does not fall under the Commission's appellate jurisdiction. *Id.* at 3-4.<sup>8</sup> He concludes the Commission lacks jurisdiction over the appeal.

*Petitioner's Position.* Petitioner contends the Postal Service's actions regarding North Platte constitute a consolidation, not a relocation. Petition at 2. Petitioner hypothesizes that even if the Postal Service's characterization of its action as a relocation is correct, by failing to conduct public hearings to describe its actions, invite questions, solicit written comments, and describe the process by which community input would be considered, the Postal Service did not follow its own relocation regulations under 39 C.F.R. § 241.4. Petition at 1.

Petitioner asserts the Postal Service has failed to file the requisite administrative record concerning North Platte, and asks the Commission to extend the due date for responses to the Postal Service's Motion to Dismiss and filing of Petitioner's Form 61 until ten days after the Postal Service files its administrative record. Petitioner Request at 1-2.

Petitioner claims he is unable to reply without the benefit of the administrative record, and reiterates his request that the Commission deny the Motion to Dismiss and order the Postal Service to provide an administrative record. Petitioner's Response 1-2.

*Commission Analysis.* The Postal Service's actions concerning North Platte are insufficient to trigger the right of appeal. The Postal Service's action constitutes a relocation or rearrangement of services pursuant to 39 C.F.R. § 241.4, because the Postal Service is moving retail services from one Postal Service retail facility to another

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<sup>8</sup> See Docket A2013-1, Order No. 1588, Order Granting Motion to Dismiss, December 19, 2012 (*Santa Monica*); Docket No. A2012-17, Order No. 1166, Order Granting Motion to Dismiss, January 24, 2012; Docket No. A2011-21, Order No. 804, Order Granting Motion to Dismiss, August 15, 2011 (*Ukiah*); Docket No. A2010-2, Order No. 448, Order Dismissing Appeal, April 27, 2010 (*Sundance*); Docket No. A2007-1, Order No. 37, Order Dismissing Appeal on Jurisdictional Grounds, October 9, 2007 (*Ecorse*); Docket No. A82-10, Order No. 436, Order Dismissing Appeal No. A82-10, June 25, 1982 (*Oceana Station*).

Postal Service facility within the same community. 39 C.F.R § 241.4; Motion to Dismiss at 8.

There is no indication that the Postal Service has taken any steps to remove access to retail services from the North Platte community or has started a discontinuance study pursuant to 39 C.F.R. § 241.3. Rather, the Postal Service states affirmatively it will continue providing retail service at the North Platte Processing Facility where retail services were not previously offered to “maintain the same level of access to retail facilities” in the North Platte community. *Id.* at 7.

The Commission lacks appellate subject matter jurisdiction over relocations because they fall outside the scope of 39 U.S.C. § 404(d). See *Santa Monica* (a transfer of retail operations to a carrier annex less than 1 mile away from the main post office is a relocation of retail services and 39 U.S.C. § 404(d) does not apply); *Pimmit*<sup>9</sup> (shifting retail services to a newly constructed facility 2 miles away is part of a larger plan to rearrange the postal network and 39 U.S.C. § 404(d) does not apply); *Ukiah* (transfer of retail operations 1 mile away from the main post office was a relocation and 39 U.S.C. § 404(d) does not apply); *East Elko*<sup>10</sup> (closing of the station in close proximity to other postal retail outlets within a community is a rearrangement of services and not a closing subject to review under 39 U.S.C. § 404(d)); *Sundance* (the transfer of retail operations to a facility within the same community is a relocation or rearrangement of facilities and 39 U.S.C. § 404(d) does not apply); *Ecorse* (moving retail operations to a new location 1.7 miles away is a relocation and not governed by 39 U.S.C. § 404(d)); *Oceana Station* (moving retail operations from one facility to a newly constructed postal facility 4 miles away in the same area constitutes a relocation and 39 U.S.C. § 404(d) does not apply).

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<sup>9</sup> Docket No. A2011-90, Order No. 1159, Order Dismissing Appeal, January 20, 2012 (*Pimmit*).

<sup>10</sup> Docket No. A2010-3, Order No. 477, Order Dismissing Appeal, June 22, 2010 (*East Elko*).

In all but one of the cases identified above, the Commission issued a final order without an administrative record from the Postal Service.<sup>11</sup>

Petitioner argues that the Postal Service has not followed its own relocation regulations as stated in 39 C.F.R. § 241. Petition at 1. However, once the Commission has determined that a Postal Service action is indeed a relocation, review of whether the Postal Service followed its relocation regulations is not within the Commission's purview. Congress, through 39 U.S.C. § 404(d), conferred appellate jurisdiction on the Commission only under certain circumstances, specifically Postal Service actions to close or consolidate a post office. These circumstances do not extend to legitimate post office relocations. See Motion to Dismiss at 3-8; PR Response at 3-5.

*It is ordered:*

1. The Motion of United States Postal Service to Dismiss Proceedings, filed on May 1, 2015, is granted.
2. Petitioner's appeal is dismissed.

By the Commission.

Shoshana M. Grove  
Secretary

Commissioner Goldway dissenting.

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<sup>11</sup> In *Pimmit*, the Postal Service filed an administrative record but argued that the record was not required for two reasons: the facts showed that the action involved was the relocation of a branch and the petitioner did not allege an alternative set of facts that would trigger the Commission appellate jurisdiction under 39 U.S.C § 404. Docket No. A2011-90, United States Postal Service Notice and Application for Non-Public Treatment, October 12, 2011, at 2.

## DISSENTING OPINION OF COMMISSIONER RUTH Y. GOLDWAY

This matter involves the closure of a main post office located squarely in a municipal downtown, and the planned substitution of window and post office box services added to an existing mail processing facility on the outskirts of the city.

I dissent from the Commission opinion because I would not dismiss this case. I am concerned that by prematurely terminating a proceeding in which ordinary citizens should have the opportunity to get information and have their say, the procedural fairness of the 39 U.S.C. § 404(d) post office closing appeals process is seriously compromised.

The Commission and the petitioners lack reasonable access to the administrative paperwork describing the Postal Service's decision, information that is held exclusively by the Postal Service. As a result, neither the petitioners nor the community nor the Commission can fairly ascertain or discuss whether appropriate steps were taken in the decision to relocate the post office, whether the newly designated location will provide adequate service and access to postal patrons, or whether this is even properly categorized as a relocation. The Postal Service has not articulated in its filings how it plans to categorize the retail postal facility slated for the North Platte Processing Facility.

The petitioners are much less familiar than the Postal Service with the interplay of rules governing § 404(d) proceedings, and appear to have had insufficient notice that all administrative documents would be withheld from their inspection. The Commission's Notice and Order in this docket stated that "[a]fter the Postal Service files the Administrative Record and the Commission reviews it, the Commission may find that there are more issues than those set forth above, or that the Postal Service's determination disposes of one or more of those issues."<sup>1</sup> The Notice and Order's procedural schedule states clearly that May 1, 2015 was the deadline for the Postal Service to file the applicable Administrative Record in this appeal. There was no

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<sup>1</sup> Notice and Order Accepting Appeal and Establishing Procedural Schedule, April 21, 2015, at 2 (Order No. 2449).

language in the Notice signaling the existence of dismissal procedures. Order No. 2449 at 4. The language of the Notice and Order did not give reasonable notice to participants of the likelihood of a foreshortened proceeding.

Some previous Commission decisions involving the relocation of a post office within a community without the benefit of an administrative record may have relied on more information. Such an interpretation of Section 404(d) in the context of the facts of this case and in the context of title 39, as a whole, does not permit thorough review, contradicts the Commission's obligation to transparency and accountability, and adds to a growing perception of distinct procedural unfairness in which most appeals and complaints are summarily dismissed at the Postal Service's request.

Like the petitioner, I am concerned that the mere holding of a meeting before the North Platte City Council failed to satisfy the notice and comment obligations required in advance of a relocation by the Postal Service's rules. See 39 C.F.R. § 241.4. A December 17, 2014, news report quoting a Postal Service letter to the community stated that the process would include "a meeting with local elected officials to discuss the project, followed by a public meeting to discuss the project with the community..."<sup>2</sup> The City Council meeting was not described in the agenda as the public hearing. *Id.* The Postal Service rejected the community's request for a full public hearing.<sup>3</sup> A presentation and limited public input at one regular City Council meeting may possibly satisfy the letter but certainly not the spirit or intent of the rule. The Postal Service's statements show that it did not follow its obligations under section 241.4 in this instance.

The Postal Service statement that the proposed service change is a relocation exempt from the § 404(d) appeal process because the new location is only 1.5 miles away from the old location is simply an unsupported assertion, without material evidence or documentation.<sup>4</sup> There is no assurance that the members of the

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<sup>2</sup> Liz McCue, *Post Office Move Proposed*, The North Platte Telegraph, December 17, 2014.

<sup>3</sup> *Id.*; George Lauby, *No Public Hearing to Discuss Post Office Closure*, The North Platte Bulletin, December 17, 2014.

<sup>4</sup> Google Maps and Mapquest indicate driving distances of no less than 2.0 – 2.1 miles between the two locations.

community or local elected officials have been consulted for their input and concerns. There is no assurance that considerations such as public transit access, window hours, availability of post office boxes, proximity to businesses and other factors will result in adequate service.

Without additional information is it hard to say whether excising a post office from city center and depositing it on the city's outskirts meets the obligations of title 39. In light of the circumstances in which a post office is being removed from proximity to its customers, the Postal Service's statement, highlighted in the Commission's opinion, that the retail service to be provided that the processing facility will "maintain the same level of access to retail facilities"<sup>5</sup> is just plain wrong.

By curtailing the proceeding without the benefit of any supporting documentation, the Commission does not properly serve the people of North Platte, Nebraska and other similarly situated communities.

Ruth Y. Goldway

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<sup>5</sup> Commission Opinion at 5.