

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

Before Commissioners:

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

Public Inquiry Concerning the
Terms of 39 U.S.C. 404(d)

Docket No. PI2016-2

COMMENTS BY MARK I. JAMISON REGARDING COMMISSION JURISDICTION
OVER POSTAL SERVICE DETERMINATIONS TO
CLOSE OR CONSOLIDATE POST OFFICES

(January 27, 2016)

In its Order 2862 the Commission solicits comments on the interpretation of terms related to 39 U.S.C. 404(d). The phrasing of the Commission's request seems to give away an intent for an exercise in narrowing the Commission's role in hearing appeals of post office closures, consolidations, and actions which otherwise seek to limit or redefine the role of post offices in American communities. The construction of the statute unfortunately limits the role of the Commission in acting to hold the Postal Service accountable to its obligations to provide service to the American public generally. As limited as the Commission's role is in these appeal proceedings, allowing the Commission to only affirm or remand for further consideration the decision rendered by the Postal Service, it would seem that the purpose of this docket is further limit the public's right to be heard and to be assured that the Postal Service has proceeded in a

manner consistent with its mandate to provide an essential public service that is relied upon by millions of Americans in all sorts of communities from the most rural to highly urban.

Rather than seeking to neuter itself and bind future Commissions to a narrowing precedent the result of this proceeding ought to be to interpret the statute and the Commission's role within the statute in as broad a role as possible.

In his recent testimony before the Senate Homeland Security & Governmental Affairs Committee the Commission's acting Chair, Mr. Taub, offered an explanation of his interpretation of the Commission's charge. Acting Chairman Taub stated that, "*As a separate and independent federal regulatory agency, the Postal Regulatory Commission determines the legality of the Postal Service's prices and products, adjudicates complaints and fair competition issues, and oversees the Postal Service's delivery performance consistent with statutory requirements.*" He then went on to say, "*The public interest role of a regulator in this case is clear, a need to protect the captive customers and ensure fair competition.*"

While it is true that the Commission has a unique role in the government's regulatory structure, it appears to be the only agency designed specifically to regulate another Federal agency, it seems that Mr. Taub has unnecessarily and intentionally reduced the Commission to the role of an umpire calling balls and strikes, a role that, if we are to accept it at face value, simply reduces the American public to a captive audience while ignoring the long and storied history of the Postal Service as an essential national infrastructure providing a critical public service that, as we can never be reminded enough, seeks to bind the nation together.

As Mr. Taub continues with his testimony before the Senate he describes the limited resources available to the Commission in performing its tasks. Taken together these aspects of the Acting Chairman's testimony point out what appears to be a fatal flaw in the perceptions underlying this docket.

Yes, in the past the Commission has been placed in the position of hearing hundreds of appeals from across the country as the Postal Service sought to diminish access and limit the quantity and quality of services available to American communities through their local post offices. An objective observer perusing the documents available in these hundreds of appeals would easily come to the conclusion that the Postal Service has regularly ignored its obligations to provide communities with a clear record of its intentions and its process in arriving at decision to close, consolidate, or otherwise disrupt post offices that are often the heart and soul of American rural communities and urban neighborhoods.

Instead of seeking to hold the Postal Service accountable and transparent it would seem that the Commission has created a proceeding designed to wallow in discussions of taxonomy as a means of limiting the expenditure of Commission resources in the critical job of giving America's communities and general public a voice; perhaps the better to get on with the job of adjudicating matters of carving up postal revenues in a way that best serves advertising mailers, delivery companies, and postal management.

In Order 2862 The Commission says that, "*Petitions filed before the Commission regarding the closing of various Postal Retail facilities often indicate a misunderstanding among the general public of the scope of the Commission authority to review Postal Service decisions regarding the operation of its retail facilities.*" It is also suggested that

the American public, the folks who the Postal Service is mandated to serve, don't understand the arcane and bureaucratic definitions that distinguish between a post office, a CPO, a CPU, a station, a branch or whatever other concoctions may arise in the future.

So while the thousands of post offices and postal facilities that Americans have come to generically know and love as "the post office" have been redefined into nothing other than a retail network despite a long and cherished history as a critical part of our communities' social fabric, the fault lies not in the stars but within the American public who are unable to distinguish bureaucratic distinctions that have no fundamental difference in the minds of the people the Postal Service exists to serve.

The Commission seeks comments on how it should approach appeals (I hesitate to use the word suggestions since it seems ill-fitting). My comment then is that the Commission should, to the greatest extent possible, interpret the sections of the statute with regard to appeals as broadly and robustly as can be legally justified. It should not seek to neuter itself, nor should it hide behind Orwellian semantics or parsed and pedantic definitions.

I am fairly certain these comments will fall on deaf ears. The current version of the Commission seems intent on solidifying its role as a member of a club that sees the Postal Service not as a constitutionally essential service and infrastructure but merely as a commercial, albeit a Federally owned, entity loyal not to the American public generally but to the "industry". In a dissenting opinion in MC2015-7 two commissioners sought to broaden a definition and standard in such a way as to allow the Postal Service great latitude in moving products into the competitive category in a way that will surely

raise costs and harm service available to some of our most vulnerable populations.

Here in this docket, the very presentation of the docket almost certainly assures that the commission will arrive at a narrow definition that will further exclude the general public from its proceedings.

The Commission has reduced the effectiveness of the Public Representative program in ways that make it even less responsive to the needs of a public that is at a desperate disadvantage in Commission proceedings. The Commission has recently been quite vocal in arguing for a clear definition of the Universal Service Obligation (an exercise that is long past necessary but which unfortunately seems destined to further redefine downward the obligations of the Postal Service). Sadly the Commission has never provided a definition of what the public's interest was in its proceedings which, for example, allowed the PR in Glenoaks to argue that cost cutting and eliminating services to a community was the primary public interest.

In the past the PR program relied greatly on the integrity and vision of the individual appointed to the position; and in most cases Commission staff was diligent and committed to protecting the public's interest and helping individuals gain access and participation in proceedings that greatly affected their communities. In the POSTPlan docket, one critical to communities in every corner of the nation, the PR put in a lackluster effort but generally the system worked well and there was hope for improvement. Now that program has clearly been reduced in scope, focus, and attention – perhaps a foreshadowing of a future where closure and consolidation appeals will be largely eliminated.

In the letter to his staff announcing his retirement USPSOIG David Williams offered a brilliant and honorable view of what the United States Postal Service represents:

In your quest to improve and protect the reputation of the Postal Service, you have peeled back the essence of the place. The Postal Service seen literally is a place of letters and stamps and sorting machines. But going beyond the literal to a conceptual level, the Postal Service is an American infrastructure that enables citizens, innovators and steady old enterprises to succeed. It is an essential part of the new digital economies of America and the world. The Postal Services' Universal Service Obligation remains a shining promise to bring resources and information to each American everywhere and assures that the nation is there for everyone. In many Countries, rural town and inner-city citizens are people of a lesser nation. Not so in this special place America.

If the Commission generally wants to address the closure, consolidation, and rearrangement of services process and the appeals to that process that are eligible under the statute then it should take the words of Inspector General Williams to heart. The Postal Service is far more than a simple commercial service and the Commission's role even within the existing limitations of the statute is far broader than Acting Chairman Taub's comment before the Senate would indicate. While it is true that the welfare of the American public generally has largely been ignored in current postal statutes, a situation that only Congress can fully repair and resolve, this Commission should take whatever stand it can to involve the general public to the greatest extent possible particularly with respect to two areas, rate and service complaints (which are now largely ignored) and the critical process of hearing appeals to closures, consolidations, and other actions which redefine the essential role of the local post office.

Respectfully submitted

/s/ Mark I. Jamison

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