

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

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Westbrookville Post Office  
Westbrookville, New York

Docket No. A2016-1

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**UNITED STATES POSTAL SERVICE MOTION TO DISMISS PROCEEDINGS**  
(March 28, 2016)

This matter commenced with a letter to the Postal Regulatory Commission that purports to invoke its jurisdiction under 39 U.S.C. § 404(d) to consider an appeal of a Postal Service decision to close the Westbrookville Community Post Office (CPO), which is a contractor-operated retail facility.<sup>1</sup> As the Postal Service has consistently maintained, the scope of Section 404(d)(5) is limited to discontinuance of Postal Service-operated “Post Offices” and does not apply to operations related to contractor-operated units, which are not owned or operated by the Postal Service. Since the Petitioner’s appeal concerns the operation of a CPO, an event that falls outside the scope of 39 U.S.C. § 404(d)(5), the Commission lacks subject matter jurisdiction and should dismiss the appeal.

**FACTUAL BACKGROUND**

Westbrookville is an unincorporated hamlet located in the town of Deerpark, in Orange County, New York. The Westbrookville CPO is operated in accordance with contract number 2DCPAC-13-B-0683, entered into by the Postal Service and contractor Ms. Marlene Roe (Petitioner). On or about September 7,

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<sup>1</sup> Notice of Appeal and Request for Review of Westbrookville, NY Post Office Closure, received from Marcelle Matthews, Esq. on behalf of Marlene Roe, regarding the Westbrookville, NY Post Office 12785, PRC Docket No. A2016-1 (March 17, 2016).

2015, Petitioner informed the Postal Service of her intention to retire as “Post Master” on March 31, 2016.<sup>2</sup> On February 18, Postal Service officials notified customers of their decision to close the Westbrookville CPO<sup>3</sup> by posting and by placing a letter in each of the boxes at the facility. Customers were informed in writing that they would be able to access services at the Cuddebackville, New York facility, located approximately four (4) miles away and were provided with both retail service hours and P.O. Box service and lobby hours at the Cuddebackville facility. Customers were also informed that upon closure, they would retain free box service, maintain the same P.O. Box numbers, and can retain Westbrookville addresses at the Cuddebackville facility. Alternate access to retail service can also be obtained through [usps.com](http://usps.com).

On March 17, 2016, following customers’ receipt of the notification of closure, Petitioner, also the CPO operator, filed a Notice of Appeal and Request for Review of Westbrookville, New York Post Office Closure. In her appeal, Peitioner asserts that there are 485 boxholders at the Westbrookville facility and that there is no rural delivery. She states that the area is rural in nature and that area roads are not paved or maintained. Petitioner further suggests that there is no reasonable and safe alternative location.<sup>4</sup>

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<sup>2</sup> *Id.* Petitioner states in her appeal that she informed the Postal Service six (6) months in advance that she intended to retire as Postmaster on March 31, 2016. Petitioner describes herself as a Postmaster even though she is a postal contractor.

<sup>3</sup> *Id.* at Attachment. United States Postal Service Letter re: Westbrookville CPO Closing 3/31/2016 (February 18, 2016).

<sup>4</sup> *Id.*

In her Notice of Appeal, Petitioner informs the Commission that “no questionnaire had been circulated. No public comment period had been offered. No sixty (60) day notice had been provided.”<sup>5</sup> Petitioner asserts that customers of the Westbrookville CPO should have been afforded the same opportunity to be heard as “citizens of federally operated facilities would have had.”<sup>6</sup> Attached to her Notice to the Commission is also a petition signed by 340 Westbrookville box holders who oppose the closure of the facility.<sup>7</sup>

### **ARGUMENT**

This matter raises the question of whether 39 U.S.C. § 404(d) grants the Commission jurisdiction to consider an appeal of the Postal Service’s decision to close a contractor-operated facility following the termination of a lease for that facility. Petitioner’s appeal is not within the scope of the Commission’s jurisdiction under 39 U.S.C. § 404(d). Section 404(d) does not apply to the operation of a retail facility whose existence derives solely from the terms and conditions of a voluntary contract. See 39 U.S.C. § 404(d).

#### **1. 39 U.S.C. § 404(d) Does Not Apply to Contract Postal Units.**

Section 404(d) provides that an appeal under that section must concern a “closing” of a “post office.” See 39 U.S.C. § 404(d). Consistent with United States Postal Service Handbook PO-101, a discontinuance occurs only when a “Post Office, classified station, or classified branch is permanently closed or consolidated.” Handbook PO-101 (October 2012) at Appendix A. The words

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at pp. 2-14 of Attachment

“Post Office, classified station, or classified branch” specifically exclude a CPO. 39 C.F.R. § 241.3(a)(2)(i) (“USPS-operated retail facility’ ... does not include any station, branch, community post office, or other retail facility operated by a contractor”). Comparatively, the definition of “contractor-operated retail facility” specifically excludes any retail facility operated by a Postal Service employee. 39 C.F.R. § 241.3(a)(2)(ii) (“Contractor-operated retail facility’ includes any ... community post office [] or other facility, including a private business, offering retail postal services that is operated by a contractor, and does not include any USPS-operated retail facility”). Thus, the regulations are explicit in distinguishing between Postal Service-operated retail facilities and CPOs, and they eliminate any confusion regarding whether a contractor-operated retail facility is subject to Section 404(d).

Thus, the necessary element of Section 404(d) jurisdiction – the Post Office requirement – is not met in this appeal. A Post Office is “operated or staffed by a postmaster or by another type of postal employee.” 39 C.F.R. § 241.3(a). Unlike a Post Office, a CPO is operated by a third-party contractor, which is neither a postmaster nor a postal employee. The Petitioner is a contractor, not a Postal Service employee. Accordingly, as a matter of law, the relief requested by the Petitioner is not available to Petitioner and should be denied.

The Westbrookville CPO is not a Post Office, or even a Postal Service-operated retail facility, so Commission jurisdiction under 39 U.S.C. § 404(d) does not attach. As the Commission is aware, the Postal Service submits that the

Commission lacks subject matter jurisdiction under 39 U.S.C. § 404(d) to review Postal Service decisions regarding the operation of a retail facility that is not a Post Office. See *generally* Initial Comments of the United States Postal Service, Section 1 (pp. 2-7), PRC Docket No. RM2011-13 (October 3, 2011). This position has even stronger support in the context of CPO units, which are operated by non-Postal Service employees, and are often located in other businesses. In the Postal Service's view, the Post Office discontinuance regulations in 39 C.F.R. Part 241.3 and Handbook PO-101 do not apply to the Westbrookville CPO because the Westbrookville CPO is not a Post Office, and it operates solely under the discretionary contractual relationship formed by the Postal Service and a third-party contractor. Additionally, the Commission's Rules of Practice for Post Office closings found in Section 3025.2 *et seq.* should not apply to a retail facility that is not a Post Office. Petitioner fails to allege facts that constitute a condition precedent to any jurisdiction of the Commission under 39 U.S.C. § 404(d)(5).

Petitioner argues that the Postal Service should have followed the procedural requirements of 39 U.S.C. § 404(d) and 39 C.F.R. § 241.3 as part of its decision to terminate the contract governing the operation of the Westbrookville CPO.<sup>8</sup> But as described above, the Postal Service had no obligation to follow these procedures because its decision concerned a contract by which a third-party contractor offered retail services. For purposes of 39 U.S.C. § 404(d), a discontinuance is limited to "an action in which a Post Office,

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<sup>8</sup> Notice of Appeal and Request for Review of Westbrookville, NY Post Office Closure.

classified station, or classified branch is permanently closed or consolidated.” United States Postal Service Handbook PO-101 § 233.1 (October 2012). The term “discontinuance” does not extend to operations at a CPO. *Id.* Thus, this appeal does not concern the discontinuance of a Post Office subject to Title 39.

**2. The Westbrookville, New York CPO Does not Meet the Knob Fork Sole Source Standard Because Postal Customers Have Alternate Methods of Access.**

While contract postal facility closures are generally not appealable, the former Postal Rate Commission carved out an exception to this rule in its decision in *Knob Fork*.<sup>9</sup> The Postal Regulatory Commission has since applied the *Knob Fork* decision to cases in which a contract postal unit is “the only retail postal facility serving the community.”<sup>10</sup> This application allows for a more expansive interpretation of the term “post office,” as defined in 39 U.S.C § 404(d) and creates a strict standard for the sole source rule. The Westbrookville, New York CPO does not meet this standard.

Petitioner states that Westbrookville, New York is a rural area and that there is no rural delivery.<sup>11</sup> She suggests that given the number of boxholders at the Westbrookville office, coupled with the rural nature of the community, the procedures for post office closures should be applied to [this] CPO[.]<sup>12</sup> In its

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<sup>9</sup> Commission Order Remanding Determination for Further Consideration, Postal Rate Commission Docket No. A83-30 (January 18, 1984).

<sup>10</sup> *Id.* at 1.

<sup>11</sup> Notice of Appeal and Request for Review of Westbrookville, NY Post Office Closure.

<sup>12</sup> *Id.*

decision in the Alplaus, NY case,<sup>13</sup> the Commission dismissed a similar appeal. In that case, the Postal Service informed customers of its decision to terminate the contract governing service at the contractor-operated facility and that service was available to customers at the nearby Rexford Post Office, located one mile away (approximately a five minute drive from the Alplaus location). Since Alplaus customers had access to retail services, the Commission determined that the sole source rule did not apply:

[T]he Postal Service in its Motion states that “[f]ormer customers of the Alplaus CPO may obtain postal services at the Rexford Post Office, located approximately a mile from the Alplaus CPO, and through [www.usps.com](http://www.usps.com) and over 20 other alternate access options located within 5 miles of the Alplaus CPO.” Motion at 2. The Rexford and Glenville post offices are located within 5 minutes’ driving time of the Alplaus CPO (according to Google Maps). [] On the facts presented here, the Alplaus CPO cannot be considered the sole source of postal services for Alplaus residents. Accordingly, the Commission’s rationale for accepting the appeal of the closing of the Knob Fork CPO does not apply in the case of the Alplaus CPO.

*Id.* at 6.

Similarly, Westbrookville is within five miles of two alternate facilities. The Otisville facility, located at 11 Main Street, is a five minute drive from the Westbrookville CPO and the Cuddebackville facility, which has been designated as the alternate facility in this case, is also a five minute drive from Westbrookville and is located less than four miles away.<sup>14</sup> Thus, the instant case

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<sup>13</sup> PRC Order No. 1293, Order Dismissing Appeal, Alplaus Post Office, Docket No. A2012-88 (March 21, 2012) at 6.

<sup>14</sup> [usps.com](http://usps.com), <https://tools.usps.com/go/POLocatorAction.action>, as accessed on March 28, 2016; See also Google Maps (directions from US Post Office, Westbrookville, NY to 19 State Route 211, Cuddebackville, NY 12729 and to 11 Main St. Otisville, NY 10963), <https://www.google.com/maps/dir/>, as accessed on March 28, 2016. See Exhibits 1-3.

does not fall within the scope of *Knob Fork* and the sole source rule is inapplicable.

### **3. Policy Considerations Support the Postal Service's Position that the Commission Lacks Jurisdiction to Consider Appeals of Contract-Operated Postal Units**

Strong policy reasons also support the Postal Service's position that the Commission lacks jurisdiction to consider the appeal of a Postal Service decision to close following termination of a contract with a third-party CPO operator. See *Post Office Organization and Administration: Establishment, Classification, and Discontinuance (Final rule)*, 76 Fed. Reg. 41413, 41416-417, Section I (July 14, 2011). The procedures imposed by 39 U.S.C. § 404(d) are not compatible with the requirements of contract management, negotiation, and implementation. The Postal Service's ability to negotiate reasonable contractual terms for the operation of a contract unit, or to require satisfactory contract performance, would be harmed if parties had the option of appealing contractual decisions. The Commission could become a party to contract negotiations, injecting more complexity into the contract negotiation process. In many situations, applying the section 404(d) procedures to CPO contract decisions would provide contractors with a bargaining advantage over the Post Office, and force the Postal Service to continue operating a contract even where sound business judgment supports termination, or circumstances are such that continuation of service is simply not possible. This imbalance in bargaining power would arise most acutely where a CPO operator is the only person in the community capable of operating the CPO. Because the participation of the CPO operator would be necessary to perform

the analysis required by section 404, a CPO operator could prevent the Postal Service from satisfying section 404 by refusing to cooperate, or it could extort money from the Postal Service in exchange for cooperation.

**CONCLUSION**

For the reasons set forth above, the United States Postal Service respectfully requests that the Postal Regulatory Commission dismiss this appeal.

Respectfully submitted,

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March 28, 2016



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Exhibit 2

Google Maps

US Post Office to 19 State Route 211,  
Cuddebackville, NY

Drive 3.3 miles, 5 min



Map data ©2016 Google 2000 ft

via US-209 S  
5 min without traffic

5 min  
3.3 miles

Google Maps

Exhibit 3

Google Maps

US Post Office to 11 Main St, Otisville, NY 10963

Drive 3.4 miles, 6 min



Map data ©2016 Google 2000 ft

via Otisville Rd and NY-211 E  
5 min without traffic

6 min  
3.4 miles

Google Maps