

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Westbrookville Post Office
Westbrookville, New York

Docket No. A2016-1

PUBLIC REPRESENTATIVE RESPONSE IN SUPPORT OF
UNITED STATES POSTAL SERVICE MOTION
TO DISMISS PROCEEDINGS

(April 12, 2016)

Pursuant to 39 U.S.C. § 404, the Public Representative hereby responds in support of the Postal Service's motion to dismiss the appeal of the Postal Service's decision to close its Westbrookville Post Office (Westbrookville facility) in Westbrookville, New York.¹

I. PETITION FOR REVIEW

On March 17, 2016, the Commission docketed an appeal of a Postal Service decision to close the Westbrookville facility, located in Westbrookville, New York.² Section 404(d)(5) of title 39 provides the Commission authority to review decisions of the Postal Service to close or consolidate post offices. Petitioner argues that the Postal Service's action constitutes a closure under section 404(d), and that this decision fails to comply with the regulations for post office closures and consolidations. Petition at 1-2; see 39 U.S.C. § 404(d).

¹ United States Postal Service Motion to Dismiss Proceedings, March 28, 2016 (Motion to Dismiss).

² Notice of Appeal and Request for Review of Westbrookville, NY PO Closure, March 17, 2016 (Petition). The Petition was filed by Marcelle Matthews on behalf of Marlene Roe (Petitioner).

The Commission instituted this proceeding under 39 U.S.C. § 404(d)(5) to consider the Petition and established May 28, 2016 as the deadline for the Postal Service to file the applicable Administrative Record for this appeal.³ On March 31, 2016, the Postal Service filed a Motion to Dismiss Proceedings, but did not file an Administrative Record.

II. POSTAL SERVICE MOTION TO DISMISS

The Postal Service's Motion to Dismiss argues that the Westbrookville facility is in fact a community post office (CPO), which is a third party contractor-operated retail facility. Motion to Dismiss at 1. A CPO provides services in small communities where an independent post office has been discontinued and bears its community's name and ZIP Code as part of a recognized mailing address. POM section 123.126, *see also* Glossary of Postal Terms.

The Postal Service further argues the Westbrookville facility is not the community's sole source for postal services; the Cuddebackville Post Office, a postal-operated facility with a postmaster is located within 4 miles from the Westbrookville facility.⁴ Westbrookville customers will be able to retain free box service, the same P.O. Box numbers, and their Westbrookville addresses at the Cuddebackville facility, as well as obtain various postal retail services. *Id.* In addition, alternate access to retail service can be obtained through the Postal Service website, www.usps.com. *Id.* Cuddeback has a designated Postmaster and sales clerk.⁵

³ Notice and Order Accepting Appeal and Establishing Procedural Schedule March 18, 2016 (Order No. 3163).

⁴ Motion to Dismiss at 2; www.usps.com; Docket No. N2012-2, POSTplan Database, USPS-LR-N2012-2/11, July 19, 2012..

⁵http://php.app.com/agent/postalemployees/search?last_name=&first_name=&title=&facility_state=&zip=12729

The Postal Service correctly asserts that because the Westbrookville facility falls outside the scope of 39 U.S.C. § 404(d)(5), the Commission lacks subject matter jurisdiction and should dismiss the Petition. *Id.* at 1⁶

III. DISCUSSION

A Postal Service determination to “close or consolidate any post office may be appealed by any person served by such office to the Postal Regulatory Commission.” 39 U.S.C. § 404(d)(5). The Commission has jurisdiction over the Postal Service’s action when it constitutes a “closing” or a “consolidation” of postal run facilities, operated by postal employees. 39 C.F.R. § 241.3(a); see Motion to Dismiss at 3. However, traditional Contract Postal Units (CPUs) and CPOs are not postal run facilities, they are contractor-operated facilities. See 39 CFR 241.3(a)(2)(ii). A CPU is a contract station, contract branch, or CPO operated under contract by persons who are not postal employees in a space provided by the contractor.⁷ As the Postal Service states in its Motion to Dismiss:

“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,

⁶ The Postal Service further contends that even if the Commission deems it has jurisdiction to review decisions to close the Westbrookville facility, it has complied with its relocation regulations under 39 C.F.R. § 241.4. *Id.*

⁷ Postal Operations Manual section 123.126, Issue 9, July 2002, Updated With Postal Bulletin Revisions Through October 31, 2013 (POM); see also, Publication 32 – Glossary of Postal Terms, July 2013, <https://about.usps.com/publications/pub32/> (Glossary of Postal Terms), defining a CPU as a “postal unit that is a subordinate unit within the service area of a main Post Office. It is usually located in a store or place of business and is operated by a contractor who accepts mail from the public, sells postage and supplies, and provides selected Special Services (e.g., Postal Money Order or Registered Mail). Also called contract branch, contract station, and community Post Office unit.”

including a private business, offering retail postal services that is operated by a contractor, and does not include any USPS-operated retail facility”). Motion to Dismiss at 4.

Although CPUs tend not to fall within the scope of 39 U.S.C. 404(d), there is an exception. If a CPU is the sole source of postal retail services to a community, the Commission has justified exercising authority over its closure or consolidation.⁸

The Westbrookville facility, is a CPO operated “in accordance with contract number 2DCPAC-13-B-0683, entered into by the Postal Service and contractor Ms. Marlene Roe,” (the Petitioner) and operated by said contractor. Motion to Dismiss at 1. The Westbrookville facility does not fit the sole source exception, as it is not the Westbrookville’s community’s sole source exception. Therefore, its closure is not within the subject matter jurisdiction of the Commission. *Id.* at 2.

Westbrookville facility customers have, and will continue to have, access to the postal retail services of the Cuddebackville, NY postal facility, located four miles away from the Westbrookville facility. *Id.* On February 18, the Postal Service provided Westbrookville facility customers with a posted written notice of the CPO’s closure and location of available retail services at Cuddebackville and by placing written notices in each of the Westbrookville facility’s P.O. Boxes. *Id.* The notice informed customers of the Cuddeback postal facility’s retail service hours, lobby hours, and informed them that once Westbrookville closes, they “would retain free box service, maintain the same P.O. Box numbers, and can retain Westbrookville addresses at the Cuddebackville facility.” *Id.*

⁸ See Docket No. A83-30, *In the Matter of Knob Fork, West Virginia 26579*, Commission Opinion Remanding Determination for Further Consideration 39 U.S.C. § 404(b)(5), January 18, 1984, at 7 (*Knob Fork*).

When determining whether a particular CPO is the sole source of postal retail services in a community, the Commission considers whether there are other sources of retail postal services to the community.⁹ The Commission's inquiry has included whether the community ceases to have effective and regular access to postal services and, if so, is there access to regular retail postal services in reasonable proximity to the affected community. In Careywood, the Commission held that although the closing CPU (or CPO) may be the sole physical postal retailer in a community, if it is not the community's only source for postal retail services, it is not considered the community's sole source and 404(d) does not apply because the closure did not eliminate the Careywood community's access to postal retail services.¹⁰

Since the Commission is precluded by law from reviewing the appeal, the Commission need not reach the issue of the Postal Service's compliance with its own regulations regarding relocations.

⁹ See Docket No. A83-30, *In the Matter of Knob Fork, West Virginia 26579*, Commission Opinion Remanding Determination for Further Consideration 39 U.S.C. § 404(b)(5), January 18, 1984, (*Knob Fork*).

¹⁰ Docket No. A2015-2, *Careywood Post Office, Careywood, Idaho*, Order No. 2505, Dismissing Appeal, May 27, 2015, at 13 (Careywood).

IV. CONCLUSION

For the reasons stated above, for lack of subject matter jurisdiction the Commission should grant the Motion of United States Postal Service to Dismiss Proceedings.

Respectfully Submitted,

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