

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

Before Commissioners:

Michael Kubayanda, Chairman;
Mark Acton, Vice Chairman;
Ann C. Fisher;
Ashley E. Poling; and
Robert G. Taub

Westbrookville Post Office
Westbrookville, NY

Docket No. A2023-1

ORDER GRANTING MOTION TO DISMISS

(Issued September 21, 2023)

I. INTRODUCTION

On July 25, 2023, Daniel Karmolinski and Dorothy Karmolinski (Petitioners) appealed the Postal Service's determination to close the Westbrookville Community Post Office (CPO) located in Westbrookville, NY 12785.¹ Petitioners request that the Commission review the Postal Service's determination in accordance with 39 U.S.C. § 404(d)(5). Petition at 1. On August 4, 2023, the Postal Service filed a motion to dismiss

¹ Petition for Review Received from Daniel Karmolinski and Dorothy Karmolinski Regarding the Westbrookville, NY Post Office, July 25, 2023 (Petition). The Petition consists of an initial Participant Statement.

the appeal.² For the reasons discussed below, the Commission grants the Postal Service's motion, and the appeal is dismissed with prejudice.

II. BACKGROUND

On July 25, 2023, Petitioners filed the appeal regarding the Postal Service's determination to close the Westbrookville CPO. See Petition. Petitioners allege that the Westbrookville CPO is a hub of the community. See *id.* at 1-2. Petitioners also allege that the Postal Service's determination to allow customers of the Westbrookville CPO to receive mail through the Otisville Post Office would be stressful and inconvenient for the customers, due to road conditions, weather, and limited parking space and accessibility at the Otisville Post Office. See *id.* at 2.

On July 27, 2023, the Commission established the instant docket to consider the appeal, designated a Public Representative, and established a procedural schedule for further submissions.³

On August 2, 2023, Cynthia Cartaya submitted a letter via email to the Commission.⁴ She alleges that there was no prior notification that the Westbrookville CPO would be closed and the customer's post office boxes would be moved to the Otisville Post Office. See Cynthia Cartaya Email. She also alleges that the road to the Otisville Post Office is hazardous, and the Otisville Post Office has very little parking and a longer walk between the parking lot and the post office in comparison with the Westbrookville CPO. See *id.*

On August 4, 2023, the Postal Service filed the Motion to Dismiss. The Postal Services states that the Westbrookville CPO operated under a CPO contract with the

² United States Postal Service Motion to Dismiss Proceedings, August 4, 2023 (Motion to Dismiss).

³ Notice and Order Accepting Appeal and Establishing Procedural Schedule, July 27, 2023 (Order No. 6586).

⁴ Email from Cynthia Cartaya to PRC-PAGR@prc.gov, Subject "Westbrookville post office," August 2, 2023 (Cynthia Cartaya Email). Although the email was dated July 17, 2023, it was posted as a filing by the Commission on August 2, 2023.

Postal Service from June 1, 2016 to June 29, 2023. Motion to Dismiss at 2-3. It states that the Westbrookville CPO provided retail products and services and had 628 Group E Post Office Boxes⁵ available to customers, 442 of which were in use at the time of closure. Motion to Dismiss at 3. It also states that prior to the decision to terminate the CPO contract, the Postal Service issued four letters of warning to the CPO operator, notifying it of various violations of the terms of the CPO contract such as “deliverable mail repeatedly being delayed for days,” “certain types of deliverable mail discarded as waste,” “failure to pay past due invoices for shortages on stamp/cash counts,” and “failure to maintain a bond” for the operation of the Westbrookville CPO. *Id.* The Postal Service further states that it notified customers on June 28, 2023 that the Westbrookville CPO would close effective June 29, 2023, and the notice explained that customers receiving Post Office Box service at the Westbrookville CPO would continue to receive such service at the Otisville Post Office (located at a driving distance of 3.3 miles away) using the same Post Office Box keys, and retain their Post Office Box addresses and ZIP code of the Westbrookville CPO. *Id.* at 4. In addition, the Postal Service states that customers can also access retail services at the Cuddlebackville, Wurtsboro, Howells, and Port Jervis Post Offices, located at driving distances of 3.5 miles, 7.2 miles, 8.1 miles, and 12 miles away, respectively. *Id.* It states the customers can additionally access postal services through usps.com and purchase stamps at 16 businesses located within 20 miles of Westbrookville’s ZIP code. *Id.* Finally, the Postal Service states that it intends to initiate a bid solicitation process in the near future to attempt to secure a new CPO in Westbrookville. *Id.* As a first step, the Postal Service distributed a mailing on July 11 and 12, 2023 to solicit interest from the public in operating such a CPO. *Id.*

⁵ Customers may qualify for Group E Post Office Boxes, which are free, if they do not receive carrier delivery from the Postal Service and meet several other requirements. United States Postal Service, Domestic Mail Manual, January 22, 2023, § 508.4.5.2 (DMM). Customers may obtain only one Group E Post Office Box for each potential carrier delivery point of service and are assigned “the smallest available box that reasonably accommodates their daily mail volume.” DMM § 508.4.5.3.

The Postal Service argues that the Commission lacks jurisdiction to hear this appeal because the Commission’s authority under 39 U.S.C. § 404(d)(5) is limited to the Postal Service’s determination to close or consolidate Postal Service-operated Post Offices, which does not include contractor-operated retail facilities such as the Westbrookville CPO. *See id.* at 6-7. The Postal Service also argues that the Commission lacks jurisdiction to hear an appeal of the closing of a contractor-operated retail facility under the Commission’s “sole source” test, which allows the Commission to hear such an appeal under 39 U.S.C. § 404(d)(5) if the contractor-operated retail facility is the “sole source” of postal services to a community. *See id.* at 7-11. The Postal Service argues that the Westbrookville CPO is not the “sole source” of postal services to the Westbrookville community, because customers in that community “will be served by the Post Offices in Otisville, Cuddlebackville, Wurtsboro, Howells, and Port Jervis.” *Id.* at 11. The Postal Service states that it has relocated Post Office Box service from the Westbrookville CPO to the Otisville Post Office, and customers will continue to have access to postal services provided by usps.com and alternative stamp purchasing services at retail businesses in the community. *Id.* at 11-12. The Postal Service also states that it intends to initiate a bid solicitation process in the near future to attempt to secure a new contractor-operated retail facility in Westbrookville. *Id.* at 12. Finally, the Postal Service argues that strong policy reasons support dismissal of the appeal, because the procedures imposed by 39 U.S.C. § 404(d) are detrimental to the Postal Service’s “contract management, negotiation, and implementation” with regard to contractor-operated retail facilities. *Id.* at 12-13.

On August 14, 2023, the Public Representative filed a response in support of the Postal Service’s Motion to Dismiss.⁶ The Public Representative states that the Commission’s authority is expressly limited by 39 U.S.C. § 404(d)(5) to only review the Postal Service’s determination to close or consolidate post offices, and the

⁶ Public Representative’s Response in Support of United States Postal Service Motion to Dismiss, August 14, 2023 (PR Response).

Westbrookville CPO “is not a traditional post office but is rather a contractor-operated facility” PR Response at 2. He states that Commission precedents establish that the Commission may only review the closure of a CPO under 39 U.S.C. § 404(d)(5) if the CPO is the “sole source” for postal services in the community. *Id.* at 2-3. He argues that in light of Commission precedents, the Westbrookville CPO is not the sole source of postal services in the community, based on the facts discussed by the Postal Service. *Id.* at 3-4 (citing Motion to Dismiss at 4). He included a chart comparing the facts in this appeal with the facts in prior Commission precedents regarding closures of contractor-operated retail facilities. *Id.* at 4, Table 1. Based on this chart, he argues that the Otisville Post Office is sufficiently close to the Westbrookville CPO to constitute an alternative source of postal services, and usps.com and nearby retail stores constitute other alternative sources of postal services. *Id.* at 4-5. He notes that although it appears the Westbrookville residents will not receive any type of carrier service, this factor has not been found to be dispositive in previous cases. *Id.* at 5. He acknowledges “the real, nontrivial toll that the closing of a rural post office can take on a community in terms of convenience, commute time, and civic pride.” *Id.* Nevertheless, he states that the standard to determine whether the Commission has jurisdiction to hear an appeal of a CPO closure is “not whether the local residents will be inconvenienced by the closing, but rather whether the residents will lose access to postal services in their entirety.” *Id.* He concludes that because Westbrookville residents have alternative means of obtaining postal services, the Commission lacks the jurisdiction to hear this appeal and should grant the Motion to Dismiss. *Id.* at 5-6.

On August 24, 2023, Petitioners amplified their initial Participant Statement in the Petition by filing a second Participant Statement.⁷ Petitioners again allege that the Westbrookville CPO is important to the community, and that travelling to the Otisville Post Office can be hazardous due to weather, road and bridge conditions, and limited

⁷ Participant Statement from Daniel Karmolinski and Dorothy Karmolinski Regarding the Westbrookville, NY Post Office, August 24, 2023 (Second Participant Statement).

parking space and accessibility at the Otisville Post Office. Second Participant Statement at 1-2. Petitioners also allege that they were given notice of the Westbrookville CPO's closing on June 28, 2023, only one day before its closing on June 29, 2023. *Id.* at 2. Finally, Petitioners state that they receive medical supplies through mail and travelling to the Otisville Post Office would be inconvenient. *Id.*

Currently before the Commission is the Postal Service's Motion to Dismiss.

III. COMMISSION ANALYSIS

A. Scope of Commission Jurisdiction

As the Commission has noted in the past, “there is a misunderstanding among the general public of the scope of Commission authority to review Postal Service decisions regarding the operation of its retail facilities.”⁸ The Commission's authority to review post office closings and consolidations is a limited power, prescribed by statute. See 39 U.S.C. § 404(d)(5). The Commission “may not modify the determination of the Postal Service.” *Id.* § 404(d)(5)(C). The only authority of the Commission—if a petitioner is successful—is the power to “order that the entire matter be returned for further consideration.” *Id.*

In this case, as discussed further below, the Commission is not ruling on a motion to dismiss the appeal of a traditional post office, but rather on a motion to dismiss the appeal of a contractor-operated facility known as a Community Post Office (CPO). The Commission's jurisdiction to hear appeals involving contractor-operated facilities such as CPOs, Village Post Offices (VPOs), and contract postal units (CPUs) is more limited than its power with respect to post offices, stations, and branches. As established in almost 40 years of Commission precedent, the Commission only

⁸ See Docket No. A2015-2, Order Dismissing Appeal, May 27, 2015, at 8 (*Careywood* or Order No. 2505); see also Docket No. A2021-1, Order Granting Motion to Dismiss, February 10, 2021, at 4 (*Spanish Fort* or Order No. 5831); Docket No. A2021-2, Order Granting Motion to Dismiss, June 23, 2021, at 2 (*Neskowin* or Order No. 5925).

possesses jurisdiction over CPO, VPO, and CPU closure and consolidation cases where the facility in question is the “sole source” of postal services for the community.⁹ This limitation to the Commission’s jurisdiction to hear the appeal of a CPO, VPO, or CPU does not affect the Commission’s authority to hear the appeals of the closure or consolidation of any of the more than 31,000 Postal Service-operated retail facilities, including post offices, stations, and branches that may be located in rural, urban, or suburban areas throughout the nation.

B. The Sole Source Standard

The sole source test has been applied in six cases since it was established in the *Knob Fork* case in 1984: *East Elko Station*,¹⁰ *Alplaus*,¹¹ *Careywood*, *Rio Nido*,¹² *Spanish Fort*, and most recently *Neskowin*. In each of these cases the Commission determined that the CPO or CPU in question was not the community’s sole source of postal services and, therefore, that the Commission did not possess jurisdiction to hear the appeal.¹³

The Commission’s sole source assessment is comprehensive and has consistently considered the distance of alternatives and potential drive time for mailers as well as the availability of carrier service. The *East Elko Station* appeal was dismissed because an alternative facility was in close proximity, 1.5 miles away. Order No. 477 at 7. Similarly, the Commission lacked jurisdiction over the *Alplaus* appeal

⁹ See Docket No. A83-30, *In re 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. A2010-3, Order Dismissing Appeal, June 22, 2010 (*East Elko Station* or Order No. 477).

¹¹ Docket No. A2012-88, Order Dismissing Appeal, March 21, 2012 (*Alplaus* or Order No. 1293).

¹² Docket No. A2017-2, Order Affirming Determination, September 1, 2017 (*Rio Nido* or Order No. 4088).

¹³ Several other cases involving CPO and CPUs have been resolved without application of the sole source test. See, e.g., Docket No. A2021-1, Order Dismissing Appeal, September 1, 2020 (*Bellville* or Order No. 5662).

because an alternative was 1 mile away with a drive time of 5 minutes and the area was provided carrier service. Order No. 1293 at 6. In *Careywood*, the Commission determined that the facility in question was not the sole source of postal services for the community where the best alternative was 7 miles away, with a 7-minute drive time, and mailers had access to rural carrier service. Order No. 2505 at 5, 13. The *Rio Nido* appeal was dismissed because an alternative facility was 2.1 miles away, with a drive time of 8 minutes, despite a lack of carrier service to the affected mailers. Order No. 4088 at 10-11. In *Spanish Fort*, the Commission noted that all parties agreed that the best alternative retail facility was the neighboring Daphne Post Office, which was located 4.8 miles away, and an approximately 10-minute drive. Order No. 5831 at 9. In *Neskowin*, the Commission determined the CPO in question was not the sole source of postal services for the community because the best alternative facility is 9.5 miles away, with a drive time of 12 minutes, and residents would continue to receive postal services through a Highway Contract Route carrier and Cluster Box Units. Order No. 5925 at 5-6. Although the sole source standard depends on the facts of each case, these prior cases provide important guideposts for future evaluations.

C. Application of the Sole Source Standard

In the instant case, the best alternative retail facility is the nearby Otisville Post Office. The Postal Service states that customers receiving Post Office Box service at the Westbrookville CPO would continue to receive mail through the Otisville Post Office, with customers being allowed to retain the Post Office Box address and Zip Code of the Westbrookville CPO, and continue to use their current Post Office Box keys. Motion to Dismiss at 4. The Otisville Post Office is located 3.3 miles from the Westbrookville CPO with a drive time of approximately 6 minutes.¹⁴ Retail services are also available at the Cuddlebackville, Wurtsboro, Howells, and Port Jervis Post Offices located 3.5, 7.2, 8.1,

¹⁴ Source: Google Maps driving distance and driving time from Westbrookville CPO to the address of the Otisville Post Office.

and 12 miles away from the Westbrookville CPO, respectively, with drive times of approximately 4 minutes, 10 minutes, 13 minutes, and 19 minutes, respectively.¹⁵ Customers also continue to have access to the postal services provided by usps.com and continue to have the option to purchase stamps at multiple nearby businesses in the community. Motion to Dismiss at 4.

Petitioners take the position that the Otisville Post Office is too distant to serve the Westbrookville community and, therefore, that the Westbrookville CPO is the sole source of postal services for the community. See Second Participant Statement at 1 (“Almost all patrons can walk to [the Westbrookville] Post Office. No other Post Office [is] available without travel.”). *Id.* However, Commission precedent demonstrates that the Westbrookville CPO is not the sole source of postal services for the Westbrookville community.

The four most analogous precedents to the instant case are *Careywood*, *Rio Nido*, *Spanish Fort*, and *Neskowin*. In *Careywood*, the Commission found that the sole source test was not satisfied where an alternative retail facility was 7 miles and a 7-minute drive away and mailers received rural carrier service. Order No. 2505 at 11. Here, although mailers in Westbrookville do not have rural carrier service, the closest retail alternative, the Otisville Post Office, is only 3.3 miles and a 6-minute drive away. In *Rio Nido*, the Commission found that the facility in question was not the sole source of postal services for mailers who did not receive any carrier service when the alternative facility was 2.1 miles away, with a drive time of 8 minutes. Order No. 4088 at 10-11. Similarly, here mailers in Westbrookville also do not receive any carrier service, and the alternative Otisville Post Office is slightly farther away (3.3 miles) with a shorter drive time (6 minutes) than the alternative in *Rio Nido*. In *Spanish Fort*, the Commission found that the sole source test was not satisfied where an alternative retail facility was 4.8 miles and a 10-minute drive away and the mailers had rural carrier service. Order

¹⁵ Source: Google Maps driving distances and driving times from Westbrookville CPO to the respective addresses of the Cuddlebackville, Wurtsboro, Howells, and Port Jervis Post Offices.

No. 5831 at 9. Again here, although mailers in Westbrookville do not have rural carrier service, the closest retail alternative is closer than the alternative in *Spanish Fort*. In *Neskowin*, the Commission found that the sole source test was not satisfied where an alternative retail facility was 9.5 miles away with a drive time of 12 minutes, and mailers continued to receive postal services through a Highway Contract Route carrier and Cluster Box Units. Order No. 5925 at 5-6. Here, although mailers in Westbrookville do not have any carrier service or Cluster Box Units, the closest retail alternative is closer than the alternative in *Neskowin*.

Based on the Commission precedents and the facts in this appeal, the Commission concludes that the Westbrookville CPO is not the sole source of postal services in the Westbrookville community. Therefore, the Commission lacks jurisdiction to review the Postal Service's determination to close the Westbrookville CPO.

D. Petitioners' Argument Regarding the Inconvenience of the Otisville Post Office

Petitioners allege travelling to the Otisville Post Office to receive mail would be inconvenient for the customers, due to road conditions, weather, and limited parking space and accessibility at the Otisville Post Office. Petition at 2; Second Participant Statement at 1-2. Another customer similarly alleges that the road to the Otisville Post Office is hazardous, and the Otisville Post Office has very little parking and a longer walk between the parking lot and the post office in comparison with the Westbrookville CPO. See Cynthia Cartaya Email.

It is important to note that the sole source test does not consider whether the facility "is the most convenient or desirable source of postal services." Order No. 2505 at 13; Order No. 5831 at 10; Order No. 5925 at 6. Rather, it focuses on whether postal services are available. *Id.* In Westbrookville, customers will continue to receive mail through the Otisville Post Office, which is located at 3.3 miles from the Westbrookville CPO with a drive time of approximately 6 minutes. Retail services are also available at several other nearby post offices. In addition, customers continue to have access to the

postal services provided by usps.com and continue to have the option to purchase stamps at multiple nearby businesses in the community. Although travelling to the Otisville Post Office may be less convenient for some customers than travelling to the Westbrookville CPO, this does not change the fact that there are alternative sources of postal services in the Westbrookville community. The Commission notes “Congress envisioned the changing nature of access to retail options . . . , which among other things, includes plans to expand alternate retail options to postal services including the Internet and non-post office access channels.” Order No. 2505 at 12; Order No. 5831 at 10; Order No. 5925 at 6. For these reasons, the Commission cannot determine that the Westbrookville CPO is the sole source of postal services for the Westbrookville community.

E. Petitioner’s Argument Regarding Lack of Sufficient Notice

Petitioners allege that they were given notice of the Westbrookville CPO’s closing on June 28, 2023, only one day before its closing on June 29, 2023. Second Participant Statement at 2. Another customer alleges that there was no prior notification that the Westbrookville CPO would be closed and the customer’s post office boxes would be moved to the Otisville Post Office. See Cynthia Cartaya Email. The Postal Service acknowledges that notice was given only one day before the closing. See Motion to Dismiss at 4. However, the Commission must possess jurisdiction over the Westbrookville CPO to reach the merits of this case.

The Postal Service, in *Knob Fork* and subsequent cases, has consistently taken the position that the Commission lacks jurisdiction over contractor-operated facilities such as CPOs, VPOs, and CPU closings entirely because those facilities are not “post offices.” In *Knob Fork*, the Commission noted the “latent ambiguity” in the statute’s use of the term “post office.” *Knob Fork* at 3. The Commission determined that there was a natural conflict between the technical and common sense definitions of the term. *Id.* The Commission then looked to the legislative history, which it determined did not provide a definitive answer as to what Congress intended. *Id.* at 5. Nevertheless, the

Commission concluded that 39 U.S.C. § 404(d)(1) applies to contractor-operated facilities because “[a]n important intent . . . of Congress was to apply § 404[(d)]¹⁶ to the closing of the sole postal retail facility serving a community.” *Id.* at 8. In other words, the Commission determined that the term “post office” is ambiguous but that Congress clearly intended to include contractor-operated facilities within that term when they are the sole source of postal services for a community.

As explained above, the Westbrookville CPO is not the sole source of postal services for the Westbrookville community, and therefore, the Commission does not possess jurisdiction and cannot consider the merit of the petitioners’ argument.

The Public Representative concurs that “a comparison with prior Commission precedent reveals that the Westbrookville CPO cannot be considered the sole source of postal services for the Westbrookville community,” and therefore the Commission should “dismiss this appeal for lack of jurisdiction.” PR Response at 4, 6.

Nevertheless, the Commission urges the Postal Service to make every effort to provide sufficient notice and to obtain comments from customers before determining to close CPOs, CPUs, or VPOs. As the comments in this proceeding suggest, customers have a range of concerns such as the distance to be travelled, travel difficulties due to road conditions and/or weather, limited parking space and accessibility of the alternative retail facility, the necessity of receiving crucial medical supplies through mail, and the importance of the local postal facility to the community. These concerns could have been considered and perhaps resolved by the Postal Service in reaching a determination whether to close a facility. This is especially true here as the Postal Service has known about the issues relating to the operation of the Westbrookville CPO as early as December 2022. See Motion to Dismiss at 3 (discussing the four letters of warning issued by the Postal Service to the operator of the Westbrookville CPO between December 2, 2022 and June 5, 2023). The Postal Service could have

¹⁶ The content of 39 U.S.C. § 404(d) appeared as 39 U.S.C. § 404(b) at the time of publication for the *Knob Fork* decision.

engaged with the customers early on to gather their input on whether the Westbrookville CPO should be closed and what the best alternative retail facility would be. At the very least, the Postal Service could have given the customers more than one day of notice before the closing.

IV. CONCLUSION

The Commission concludes that the Westbrookville CPO is not the sole source of postal services for the Westbrookville community and, therefore, that the Commission lacks jurisdiction to hear the instant appeal. For the reasons set forth above, the Postal Service's Motion to Dismiss is granted, and the appeal is dismissed with prejudice.

V. ORDERING PARAGRAPH

It is ordered:

The Petition for Review of the decision to close the Westbrookville, NY CPO is dismissed with prejudice.

By the Commission.

Jennie L. Jbara
Alternate Certifying Officer