

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

Before Commissioners:

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

Village Station
Pinehurst, North Carolina

Docket No. A2011-49

ORDER AFFIRMING DETERMINATION

(Issued December 12, 2011)

I. INTRODUCTION

On August 18, 2011, John M. Marcum and Bettye M. Marcum (Petitioners) filed a petition with the Commission seeking to appeal the Postal Service's determination to close the Village station in Pinehurst, North Carolina (Village station).¹ The Petition included a request for suspension of the Postal Service's decision pending review. *Id.* The Commission also docketed an appeal and request for suspension from Ralph

¹ Petition of John M. Marcum and Bettye M. Marcum, postmarked August 12, 2011 (Petition or Marcum Petition). A later filing by Petitioners includes an attachment referred to in, but omitted from, the Petition. See Appeal and Petition for Review, August 22, 2011 (Revised Petition). The attachment is a copy of a Public Notice posted by the Postal Service at the Village station.

Redmond Jr.² After reviewing the record in this proceeding, the Commission affirms the Final Determination to close the Village station.

II. PROCEDURAL HISTORY

On August 22, 2011, the Commission established Docket No. A2011-49 to consider the appeal, designated a Public Representative, and directed the Postal Service to file the Administrative Record and any responsive pleadings.³ On September 2, 2011, the Postal Service filed a notice, a copy of an Administrative Record, and an application for non-public treatment of certain portions of the record.⁴ The Notice supports the Postal Service's decision to close the Village station. It also challenges Commission jurisdiction over the appeal and related matters, including any obligation to file an Administrative Record complying with the standards for cases involving post offices and applicability of other procedural requirements. These challenges stem from the Postal Service's position that a station is a retail unit subordinate to a post office and that section 404(d) and implementing regulations therefore do not apply to this situation. Notice at 1-2.⁵

² See Appeal and Petition for Review from Ralph Redmond Jr., August 26, 2011 (Redmond Petition). The Redmond Petition is identical to the Marcum Petition, except for the name and contact information. In a separate filing, Robert and Ruth Stolting annotate the Marcum Petition with an expression of support for Petitioners' position. See Letter from Robert and Ruth Stolting Regarding the Pinehurst Village Station, Pinehurst, NC 28370, September 1, 2011. The Commission did not receive any additional filings from Mr. Redmond or the Stoltings.

³ Notice and Order Accepting Appeal and Establishing Procedural Schedule, August 22, 2011 (Order No. 819).

⁴ United States Postal Service Notice and Application for Non-Public Treatment, September 2, 2011 (Notice). The Administrative Record was submitted with the Notice and included, as Item No. 47, the Final Determination to Close the Village Station, NC Station and Continue to Provide Service by Independent Post Office (Final Determination). The Application of the United States Postal Service for Non-public Treatment of Materials appears as Exhibit 1 to the Notice.

⁵ The Commission has repeatedly rejected the Postal Service's jurisdictional arguments based on the Postal Service's internal categorization of retail facilities. See Docket No. A2010-3, Order No. 477, Order Dismissing Appeal (East Elko), June 22, 2010, at 5-6.

On September 23, 2011, Petitioners filed a brief in support of their appeal, including a statement opposing the application for non-public treatment.⁶ On October 7, 2011, Petitioners filed a motion renewing their earlier request for suspension of the Postal Service's decision to close the Village station on grounds that re-opening it would not entail undue effort.⁷

On October 14, 2011, the Postal Service filed an opposition to the Motion.⁸ The opposition reiterates the Postal Service's position that the Commission lacks jurisdiction over station consolidations or closings. *Id.* It further asserts the Commission has not granted suspensions in previous cases involving stations and branches and claims a delay will frustrate plans to close the Village Station. *Id.* On October 27, 2011, Petitioners filed a response to the Postal Service's opposition.⁹

III. BACKGROUND

The Village station is located in Pinehurst, North Carolina. The Postal Service has determined to close the Village station and provide delivery and retail services at Pinehurst post office, located approximately 2 miles away.¹⁰ Final Determination at 2. The Village station provides service 22.5 hours a week, Monday through Friday from 10

⁶ Petitioner(s) Marcum Brief in Support of their Petition for Appeal and Suspension, September 23, 2011 at 2 (Marcum Brief). A Commission rule allows access to non-public material under certain conditions.

⁷ Motion of Petitioners John and Bettye Marcum for an Order Suspending the Decision to Close the Pinehurst Station, October 7, 2011 (Marcum Motion). Petitioners renewed this request in their brief. The last day of business at Village station was August 19, 2011. See Revised Petition, Attachment.

⁸ Response of United States Postal Service to Motion of Petitioners John and Bettye Marcum for an Order Suspending the Decision to Close Pinehurst Station, October 14, 2011 (Postal Service Response to Marcum Motion).

⁹ [Marcum] Motion for Late Acceptance and Response to USPS Comments, October 27, 2011 (Marcum Response). The Commission grants the Motion for Late Acceptance.

¹⁰ Mileage estimates in the Administrative Record vary slightly. No estimate is more than 2 miles or less than 1.6 miles. See, *for example*, Final Determination at 2 (section I) referring to 1.9 miles and Final Determination at 4 (section VI) referring to 1.9 miles. MapQuest estimates the driving distance between the Village station and the Pinehurst post office to be approximately 1.9 miles (4 minutes driving time).

a.m. to 2:30 p.m. It is closed on Saturday. *Id.* The lobby is open 24 hours a day, Monday through Saturday. *Id.* The Village station has 1291 post office box or general delivery customers and no delivery customers.¹¹ *Id.* Retail services include the sale of stamps, stamped paper, and money orders; special services; and acceptance and dispatch of all classes of mail. *Id.* Retail window activity averaged 176 transactions and accounted for 147 minutes of daily retail workload. *Id.* Office receipts for the last 3 years have been \$316,950 in FY 2008; \$320,509 in FY 2009; and \$361,599 in FY 2010. *Id.*

On March 25, 2011, the Postal Service distributed 1291 questionnaires to delivery customers. It also made questionnaires available over the counter to retail customers. *Id.* Four hundred forty-four questionnaires were returned. *Id.* The Postal Service characterizes questionnaire responses addressing the alternative service as 4 favorable; 89 unfavorable; and 351 expressing no opinion. *Id.* The Postal Service also states that on April 10, 2011, it received a petition with 55 signatures supporting retention of the Village station. *Id.*¹²

Upon implementation of the Final Determination, the Postal Service intends to provide delivery and retail services to former Village station patrons at Pinehurst post office. *Id.* Window service hours at Pinehurst post office are 8:30 a.m. to 5 p.m., Monday through Friday, and 9 a.m. to 12 noon on Saturday. *Id.* Customers who currently have a post office box at the Village station may opt to retain their box, but boxes will be physically relocated to the Pinehurst post office. The cost of boxes at the replacement facility will be the same. *Id.* at 3 (Response to Concern No. 8). Former Village station patrons also may opt for street delivery via a carrier route emanating from the Pinehurst post office. *Id.*

¹¹ Petitioners indicate that the number of boxes, until recently, was close to 2000, but the closing notice prompted customers to make delivery decisions in advance of the closing. See Marcum Brief at 4.

¹² See *also* Administrative Record, Item No. 27.

IV. PARTICIPANT PLEADINGS

Petitioners' positions. In their brief, Petitioners incorporate and expand on concerns set forth in their original filing.¹³ They reiterate their claim that the Postal Service did not follow notification, posting, and other requirements, or respond to the motion for suspension. Marcum Brief at 1.¹⁴ They also assert that the Postal Service's redaction of data and information in the Administrative Record has severely handicapped their efforts, and provide several reasons why the application for non-public treatment should be denied. *Id.* at 2.

Station/office distinction. Petitioners take issue with the Postal Service's distinction between post offices and stations. They note that the Village station location has been in continuous operation for 116 years, most of that as the only Pinehurst post office. *Id.* at 3. They assert that the replacement office was built in the early 1990s, that both facilities have been well utilized ever since, and that the population has quadrupled.¹⁵ *Id.* Thus, they consider the Postal Service's distinction between station and post office "quite arbitrary," and contend that one or both facilities could be treated as a main post office by any reasonable definition. *Id.*

Impact on business. Petitioners assert that many of the Postal Service's responses to redacted letters frequently state that there "is no impact on the business community." *Id.* They contend this is completely contrary to the record, which they view as replete with numerous complaints from business owners. *Id.* Moreover, they note that have recently received 15 letters from business owners in the village center seeking to join their appeal. *Id.*

¹³ Petitioner(s) Marcum Brief in Support of their Petition for Appeal and Suspension, September 23, 2011 (Marcum Brief). The Marcum Brief includes a list (Annex) of Pinehurst businesses Petitioners indicate support their appeal. See also Errata Notice, September 28, 2011 (Errata).

¹⁴ Petitioners ask that the Motion for Suspension be granted immediately and renew their request for the duration of this proceeding. Marcum Brief at 1.

¹⁵ Petitioners also say it is not clear whether the newer facility on Blake Road was coordinated under Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470, *et seq.* (NHPA). Petition at 2 (Concern No. 8).

Alternative economic analysis. Petitioners present an alternative analysis challenging the Postal Service's estimate that it will save \$66,000 by closing the Village station. *Id.* at 4. Their approach results in costs of over \$325,000 associated with the closing, which they say swamps the estimated savings. *Id.* and Errata. Petitioners' estimate, in the absence of accessing redacted data, is based on conversations with District (Charlotte, NC) postal officials about assumptions underlying the Postal Service's estimate, a Government Accounting Office (GAO) figure for curbside delivery, and personal observations. They assert the Postal Service's estimate assumed all current box holders would transfer their box service to the replacement facility; there would be no curbside delivery cost; and all window counter business would go to the replacement facility. *Id.* at 4.

Petitioners assert that in the months leading up to the closure, many box holders had already withdrawn, erecting their own mailboxes. *Id.* They acknowledge that they do not have precise data, but say it appears that nearly half the box renters have withdrawn and have erected mailboxes or are using the service at the gated community. *Id.* Petitioners also estimate that at approximately \$100 average yearly rental per box, and a presumed loss of one thousand customers (half the original boxes), there is a loss of \$100,000. Using \$225 per customer for curbside delivery (based on GAO data) and some loss in window service revenue (based on patrons switching parcel mailings to a private service), they estimate a likely drop in revenue of more than \$325,000, far exceeding the Postal Service's savings estimate of \$66,000. *Id.* They observe: "Looked at another way, the USPS-owned station is fully depreciated, had one staff member, and before the closing was initiated was taking in perhaps a quarter of a million dollars—a nice profit under any criteria." *Id.*

Impact on historic district. Petitioners claim the closing has had a negative impact on the historic district of Pinehurst. They say that the village station has been the cultural and business center of the village for over a century and is the main magnet that draws residents to the village center. *Id.* at 5. Petitioners assert that the Village station is within a national historic district. Therefore, they believe the Postal Service

should have considered the requirements of the National Historic Preservation Act (NHPA).

Petitioners acknowledge that the Postal Service faces difficult circumstances in trying to plan for achieving profitability; however, they assert that the goal of closing small, underutilized and unprofitable stations is not applicable in the case of the Village of Pinehurst. Instead, they contend there is a brisk business in the Village station, with over a thousand daily users, and over 120 more through the window, and it returns a profit based on Postal Service information provided prior to closure. *Id.*

Postal Service. The Postal Service maintains its position that this appeal concerns a station, not a Post Office, for purposes of 39 U.S.C. § 404(d).¹⁶ Postal Service Comments at 1. Its view is that Congress knowingly used “Post Office” in its technical sense, thereby excluding stations and branches, as demonstrated in the legislative history, and that Congress had used “Post Office” in its technical sense for well over a century. Accordingly, it claims the Commission lacks jurisdiction to hear Petitioners’ appeal. *Id.* at 2.

The Postal Service also claims the procedural requirements of 39 U.S.C. § 404(d) do not apply because the discontinuance of the Village station does not qualify as a closure envisioned by 39 U.S.C. § 404(d). It asserts, and indicates the Commission has recognized, that section 404(d) procedural requirements do not apply where postal customers do not lose access to postal services due to the location of alternate retail facilities in “close proximity” to the discontinued station. *Id.* (internal citations omitted). In this instance, the Postal Service asserts that affected customers will not lose access to postal services because they will continue to have access to the Pinehurst post office, located approximately 1.6 miles from the Village station, to nearby alternate access, including at Wells Fargo Bank, or Stamps by Mail. *Id.* at 2-3 (*citing* Exhibit 3).

¹⁶ The Postal Service states that these arguments are also found in its comments in PRC Docket Nos. A2010-3 and RM2011-13. Postal Service Comments at 1 (internal citations omitted).

Moreover, the Postal Service claims that even assuming the section 404(d) requirements apply in the context of the discontinuance of the Village station, it has satisfied the salient provisions of section 404(d) because it distributed questionnaires on March 25, 2011 notifying customers of the possible discontinuance of the Village station and inviting comments on the potential change. *Id.* at 3. It says it also made the questionnaires available over the counter for all interested retail customers. *Id.* It asserts that this effort furnished customers well over 60 days' notice of the Postal Service's intention to consider discontinuance of the facility. It points to receipt of 444 customer responses to the questionnaires as confirmation of notice and the extensive input from customers. *Id.* The Postal Service also says that upon making the final decision to discontinue the Village station, it informed the community of the decision through a public notice posted on July 8, 2011. *Id.*

The Postal Service asserts that the Administrative Record demonstrates that it considered all of the pertinent criteria of section 404(d), including the effect on postal services, the community, and employees, and the economic savings arising from the discontinuance. *Id.* It states that customers notified the Postal Service of their concerns related to postal services, including the conditions of other nearby postal facilities; the community, including the effect on senior citizens and local businesses; and employees and, as reflected in the Administrative Record, it considered these concerns during the decision-making process. *Id.* It states affected postal employees will be reassigned to other postal facilities in full accordance with agreements between the Postal Service and employee organizations. *Id.* Finally, it states it provided a breakdown of the costs that serve as a basis for its estimate of economic savings. *Id.*

In response to Petitioners' assertions regarding lack of compliance with the NHPA, the Postal Service asserts that any arguments based on the NHPA are beyond the Commission's jurisdiction. *Id.* at 4 (n.7), *citing* 39 CFR § 241.4(d).¹⁷ Instead, its

¹⁷ This regulation, captioned "Discontinuance of post offices; historic preservation" provides: "(1) It is the policy of the Postal Service, by virtue of Board of Governors Resolution No. 82-7, to comply with Section 106 of the general provisions of the National Historic Preservation Act, 16 U.S.C. 470, *et seq.*,

position is that compliance is an internal Postal Service matter subject to the scrutiny of the Postal Service Board of Governors. *Id.* Moreover, it claims Petitioners' evidence regarding changes in local business traffic after the closure of the Village station (which it characterizes as anecdotal) was developed after the Postal Service made its decision to discontinue the facility and is not part of the record, and thus could not be considered in this appeal, assuming it were within the scope of the Commission's jurisdiction. *Id.* at 4-5.

The Postal Service also notes that Petitioners make representations regarding the number of former Village station box customers who chose curbside delivery after the Village station's closure in connection with their claim that the economic savings estimate is inaccurate. It contends that Petitioners' information, like the information regarding local business impact, was developed after the Postal Service made its final determination regarding the discontinuance of the Village station and is not part of the record, and thus cannot be considered in this appeal. *Id.* at 5.

V. COMMISSION ANALYSIS

The Commission's authority to review post office closings is provided by 39 U.S.C. § 404(d)(5). This section requires the Commission to review the Postal Service's determination to close or consolidate a post office on the basis of the record that was before the Postal Service. The Commission is empowered by section 404(d)(5) to set aside any determination, findings, and conclusions that it finds to be (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (b) without observance of procedure required by law; or (c) unsupported by substantial evidence in the record. Should the Commission set aside any such

Executive Order 12072, and Executive Order 13006. Therefore, any facility project that will have an effect on cultural resources will be undertaken in accordance with that policy. (2) Any action involving the closing or other discontinuance of a post office shall be undertaken only in accordance with 39 U.S.C. 404(b) [sic] and 39 CFR 243.1. In the event a facility action is subject to both this section, and either the NHPA or the post office discontinuance requirements, all comment periods and other public participation matters shall be governed by those statutes."

determination, findings, or conclusions, it may remand the entire matter to the Postal Service for further consideration. Section 404(d)(5) does not, however, authorize the Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service.

The Commission and the Postal Service have reached different conclusions about the status of branches and stations under section 404(d). The Commission's position is the legislative history of this provision supports coverage of retail facilities, such as stations and branches. The Postal Service concludes otherwise, asserting that Congress used the term "post office" in a technical sense and that its administrative designations are dispositive. Both agencies, notwithstanding their institutional differences on the scope of section 404(d), have attempted to serve the interests of postal patrons affected by closing and consolidations. One example of this effort is that the Postal Service is according patrons of stations and branches some of the procedural rights extended to patrons of post offices and is providing, in an Administrative Record, some of the information and data provided in post office closings. This backdrop informs the Commission's finding in this Order.

A. Notice to Customers

Section 404(d)(1) requires that, prior to making a determination to close any post office, the Postal Service must provide notice of its intent to close. Notice must be given 60 days before the proposed closure date to ensure that patrons have an opportunity to present their views regarding the closing. The Postal Service may not take any action to close a post office until 60 days after its determination is made available to persons served by that office. 39 U.S.C. § 404(d)(4). A decision to close a post office may be appealed within 30 days after the determination is made available to persons served by that post office. 39 U.S.C. § 404(d)(5).

Petitioners contend that the notice, including notice of a right to petition, in this case did not equate to that provided to patrons of post offices. Moreover, no community meeting was held. The Commission's position supports full section 404(d) procedural

rights for patrons of stations and branches. On the record developed here, however, the Commission concludes that Petitioners and other patrons had actual notice of the Postal Service's intentions to close the Village station and of the replacement services. They also had an opportunity to comment via questionnaire. Administrative Record Item Nos. 31 and 32. Based on a review of the record, the Commission finds that the Postal Service has satisfied the notice requirements of 39 U.S.C. § 404(d).

B. Other Statutory Considerations

The Postal Service must consider the following factors in making a determination on whether to close a post office: the effect on the community; the effect on postal employees; whether a maximum degree of effective and regular postal service will be provided; and the economic savings to the Postal Service. 39 U.S.C. § 404(d)(2)(A).

Effect on the community. The Postal Service typically solicits input from the community affected by a potential post office closing by distributing questionnaires to customers and holding a community meeting. In this case, the Postal Service distributed questionnaires to post office customers and made questionnaires available over the counter. It did not hold a community meeting. Administrative Record Item No. 26.

The Postal Service asserts that it responded to concerns about the effect on the community by informing patrons that they could elect to keep their post office box address; elect a street delivery option (which would entail a change of address); or avail themselves of various alternative means of access to retail services. Postal Service Comments at 5-6.

Pinehurst Village, which includes the Village station, is a national historic district. Petitioners specifically note the station's location in the historic designation and the apparent applicability of certain requirements under the NHPA. Petition at 2. Some respondents to the questionnaire contend that closing Village station would detract from the ambiance and historic heritage of the Village of Pinehurst. See, e.g., Administrative

Record Item No. 401B. Others express concern that closing will have a negative impact on local businesses. *See, e.g., id.* at Item No 374:

The Postal Service addresses these concerns in two ways. First, it asserts that compliance with the NHPA and related regulations is a matter between it and the Board of Governors. Second, the Postal Service maintains that customer responses to questionnaires indicate that the discontinuance of the Village station would not have an adverse effect on local businesses. Postal Service Comments at 4, *citing* Administrative Record, Item No. 33 at 3. Moreover, it opposes what it characterizes as “anecdotal evidence” regarding changes in local business traffic following the closure of the Village station as outside the record, and thus ineligible for consideration in this appeal. Postal Service *Id.* at 4-5.

The Commission’s role in appeals under section 404(d)(5) does not include responsibility for enforcing the NHPA. The Commission’s review is limited to the record developed by the Postal Service in reaching its determination. 39 U.S.C. § 404(d)(5). In this case, Petitioners refer to post-record developments which the Commission is not statutorily permitted to rely upon.

Having reviewed the record, the Commission concludes that the Postal Service has adequately considered the effect of closing on the community. For example, in response to concerns that closing will have a detrimental effect on the business community, the Postal Service stated that “[b]usinesses require regular and effective postal services, . . . Questionnaire responses revealed that customers will continue to use local businesses if the post office is discontinued.” Final Determination at 3. Regarding the needs of the community, the Postal Service stated: The proposed alternate delivery service will meet the mailing needs and service needs of the community in a more cost effective manner.” *Id.* at 2.

Effect on postal employees. The Final Determination states that any employees assigned to this facility will be relocated. Final Determination at 4. The Commission agrees that this satisfies the statutory requirement in 39 U.S.C. § 404(d)(2)(A)(ii) that the Postal Service consider the effect on employees.

Effective and regular service. The Postal Service plans to provide Village station patrons with delivery and retail service out of the Pinehurst post office. Final Determination at 2. Post office box customers may retain their previous addresses, but the boxes will be physically relocated to the main post office. *Id.* at 3. The Postal Service also claims other retail outlets are available. *Id.* at 4.

Based upon its review of the record, the Commission concludes that the Postal Service has satisfied the requirement that it consider whether effective and regular service will be provided to customers as required by 39 U.S.C. § 404(d)(2)(A)(iii).

Economic savings. The Postal Service estimates that annual savings of \$66,643 will be generated from the closure. *Id.* at 4. This estimate is based solely on employee salary and benefits totaling \$66,643. It does not include any annual lease costs, since the Postal Service owns the building. *Id.* (section IV). It also does not include any one-time costs (such as relocation of boxes) or the cost of replacement service, despite the fact that these costs will be incurred.

Petitioners assert that the economic savings estimates are flawed because it assumes all customers will elect box delivery at the replacement facility, and none will elect street delivery. Marcum Brief at 4-5. Some respondents to the questionnaire also question the omission of any consideration of patrons' costs for gas, time, and new stationery. See, e.g., Administrative Record Item Nos. 384A, 402A and 392B.

The Commission traditionally has not expected the Postal Service to account for patrons' costs. However, it has repeatedly encouraged the Postal Service to improve the consistency, accuracy and transparency of its savings estimate. Here, the Postal Service notes that post office boxes will be relocated to the replacement office, but does not provide an estimate for this one-time cost or otherwise account for it in the savings estimate. In addition, there is neither offsetting estimate for the cost of replacement service, nor recognition of the continuation of the employee's salary at another location.

Postal Service savings' estimates should reflect additional costs incurred to provide the alternate service. That apparently was not done in this instance. Village station is closed. The Final Determination includes Postal Service's estimated

economic savings. Given the Commission's conclusion that the alternate service will be adequate and reliable, under the circumstances, the Commission sees no benefit from a remand solely on this issue.

VI. CONCLUSION

Based on its review of the record before it, the Commission concludes that the Postal Service has adequately considered all requirements of 39 U.S.C. 404(d). Accordingly, its determination to close the Pinehurst Village station is affirmed.

It is ordered:

The Postal Service's determination to close the Village station (Pinehurst, North Carolina) is affirmed.

By the Commission.

Ruth Ann Abrams
Acting Secretary

Chairman Ruth Y. Goldway, dissenting.

CONCURRING OPINION BY COMMISSIONER LANGLEY

In FY 2010, the Pinehurst Village Station increased revenues by \$41,090 over FY 2009 to \$361,599, a 12.8 percent increase. Although the Postal Service determines how it will allocate its resources across its network, I believe that a profitable retail postal facility is an important asset. This is especially true at a time when the Postal Service is facing significant financial shortfalls.

While I agree that the Postal Service met the most minimum requirements to notice a proposed closure, from the Record, it appears that it pre-judged the outcome of this discontinuance. The Notice to close the Pinehurst Village Station was posted at the facility on Friday, August 19, 2011, 12 days before the formal Final Determination was signed by Postal officials in Washington, DC. By posting the Notice in the Pinehurst office prior to the official affirmation at Postal Headquarters, customers and the general public were left with the impression that the Postal Service had pre-judged the outcome. Such action underscores concerns that discontinuance reviews do not take into consideration community input and concerns under 39 U.S.C. §404(d)(2)(A)(i).

I agree with Chairman Goldway that the Commission's review is limited to the record developed by the Postal Service in reaching its determination. 39 U.S.C. § 404(d)(5). And that in this case, Petitioners referred to post-record developments which the Commission is not statutorily permitted to rely upon. However, it is important for the Postal Service to ensure that post-closure of a postal retail facility does not adversely impact the community.

Lastly, as I have stated previously in past opinions, the Postal Service did not present a fully balanced cost/benefit analysis for closing this location. The Postal Service should take into consideration that a non-career postmaster relief (PMR) has been in charge of this facility since 2008, not an EAS-11 postmaster, and reflect the PMR's salary and benefits in its cost savings analysis.

Nanci E. Langley

DISSENT OF CHAIRMAN GOLDWAY

This case should be remanded because the Postal Service failed to adequately consider the effect on the community as required by 39 U.S.C. § 404(d)(2)(A)(i), and for lack of consistency with the requirement to consider economic effects as required by 39 U.S.C. § 404(d)(2)(A)(iv).

Failure to Adequately Consider Impact on the Community

The Postal Service's responses to redacted letters frequently state that there "is no impact on the business community." This appears contrary to the record, which contains numerous complaints from business owners. Several individuals specifically identified businesses they said they would no longer be patronizing once the Village station was closed because they would no longer be in the area. Those impacts on the community should not have been ignored by the Postal Service.

Some of the responses to questionnaires unmistakably express concerns that there will be a negative impact on local businesses. *See, for example*, Administrative Record Item No 374: "Pinehurst [Village] P.O. is the gathering center for the village citizens and where they subsequently use the adjacent businesses. If the PO is closed the effect on businesses will be disastrous. ..." *See also* Administrative Record Item Nos. 382, 384 and 386.

Notwithstanding these comments, the Postal Service maintains that customer responses to questionnaires indicate that the discontinuance of the Village station would not have an adverse effect on local businesses. Postal Service Comments at 4, *citing* Administrative Record, Item No. 33 at 3. Moreover, it opposes what it characterizes as "anecdotal evidence" regarding changes in local business traffic following the closure of

the Village station as outside the record, and thus ineligible for consideration in this appeal. Postal Service *Id.* at 4-5.

The Commission's review is limited to the record developed by the Postal Service in reaching its determination. 39 U.S.C. § 404(d)(5). In this case, Petitioners refer to post-record developments which the Commission is not statutorily permitted to rely upon. There is, however, evidence in the Administrative Record regarding the alleged impact of the Village station closing on local businesses. It appears from a review of the record that these alleged impacts are directly related to, and grow out of, the Village station's existence.

The community was also concerned about the impact of the closing of the post office on the historic nature of the community. The Postal Service did not address the impact of the closing on the historic nature of the community in which the post office is located. The community's concern nevertheless is of great significance and importance to the community and for that reason should have been addressed in the Administrative Record and Final Determination.

The Postal Service's position is that compliance with the National Historic Preservation Act (NHPA) and related regulations is a matter between it and the Board of Governors. The Commission's role in appeals under section 404(d)(5) does not include responsibility for enforcing the NHPA. I believe the Commission must nevertheless consider whether the Postal Service adequately considered all material concerns patrons raised about the "effect on the community" with the facts on the record. In this instance, the Administrative Record clearly shows that numerous respondents to the questionnaire specifically noted the historic setting, without specifically mentioning the NHPA.

Given numerous expressions of concern about the impact of the closing on the historic nature of the post office and its immediate surroundings, the Postal Service's failure to address these concerns renders its consideration of the effect on the community inadequate and inconsistent with the section 404(d), fully independent of the Postal Service's position on its obligations under the NHPA and its regulations implementing that Act.

Lack of Consistency with the Requirement to Consider Economic Savings

The Postal Service estimates that annual savings of \$66,643 will be generated from the closure. Final Determination at 4. This estimate is based solely on employee salary and benefits totaling \$66,643. It does not include any annual lease costs, since the Postal Service owns the building. *Id.* (section IV). It also does not include any one-time costs (such as relocation of boxes) or the cost of replacement service, despite the fact that these costs will be incurred.

Petitioners assert that the economic savings estimates are flawed because it assumes all customers will elect box delivery at the replacement facility, and none will elect street delivery. Marcum Brief at 4-5. Some respondents to the questionnaire also question the omission of any consideration of patrons' costs for gas, time, and new stationery. See, e.g., Administrative Record Item Nos. 384A, 402A and 392B.

The Commission traditionally has not expected the Postal Service to account for patrons' costs. However, it has repeatedly encouraged the Postal Service to improve the consistency, accuracy and transparency of its savings estimate. Here, the Postal Service notes that post office boxes will be relocated to the replacement office, but does not provide an estimate for this one-time cost or otherwise account for it in the savings estimate. In addition, there is neither offsetting estimate for the cost of replacement service, nor recognition of the continuation of the employee's salary at another location.

The Postal Service does not address why it omits offsets for relocating boxes or for salary continuation.

In my opinion, the savings estimate is not supported by the record. Even without resort to extra-record assertions, the estimate omits box relocation expense. It also omits costs for any form of replacement delivery service (box or carrier) and for potential salary continuation. Some responses to questionnaires clearly state that patrons would not opt for box service at the replacement facility. Similarly, the Administrative Record shows that the Postal Service makes an affirmative representation that any employees “will be relocated.” Final Determination at 4.