

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

Before Commissioners:

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

Rio Nido Post Office  
Rio Nido, California

Docket No. A2017-2

ORDER AFFIRMING DETERMINATION

(Issued September 1, 2017)

I. INTRODUCTION

On June 29, 2017, Joseph Baxter filed a petition for review on behalf of several named citizens and entities (Petitioners) appealing the Postal Service's determination to close the Rio Nido Post Office located at 14770 Rio Nido Road, Rio Nido, CA 95471.<sup>1</sup> The Petition is dismissed for lack of jurisdiction.<sup>2</sup>

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<sup>1</sup> Appeal of Final Determination Re: Closure of Rio Nido, California Post Office, June 29, 2017 (Petition). Two substantively identical pleadings were received on July 3, 2017, purporting to amend the original Petition: the first signed by Joseph Baxter, and the second signed by Kim Holliday, Marsee Henon, Pip Marquez de la Plata, Alexander Goodman, and Ingrid Emming. The second pleading appears to subsume the first, and shall be referred to as the Amended Petition; Amended Petition for Review of Postal Service Final Determination, July 3, 2017 (Amended Petition); Participant Statement Received from Kim Holliday, Marsee Henon, Pip Marquez de la Plata, Alexander Goodman, and Ingrid Emming, July 3, 2017.

<sup>2</sup> The Commission is divided equally, 2-2, on the matter of jurisdiction over this appeal. In the absence of a majority, the Commission cannot assert jurisdiction, and the Postal Service's final determination to close the Rio Nido CPO stands.

## II. PROCEDURAL HISTORY

On June 30, 2017, the Commission established Docket No. A2017-2 to consider the appeal, designated a Public Representative, and directed the Postal Service to file its Administrative Record and any response pleadings.<sup>3</sup>

On July 10, 2017, the Postal Service filed a motion to dismiss the appeal.<sup>4</sup> An Administrative Record was not filed in this docket. The Public Representative filed an answer in support of the motion.<sup>5</sup> The Petitioner filed an answer in opposition to the motion.<sup>6</sup>

The Chairman issued one information request in this docket.<sup>7</sup> The Postal Service filed its responses on August 8, 2017.<sup>8</sup> Petitioners filed comments in regard to the Postal Service's responses.<sup>9</sup>

Letters from Fifth District Supervisor, Lynda Hopkins, County of Sonoma Board of Supervisors to the Public Representative, dated July 13, 2017 and August 15, 2017, in support of the Rio Nido community are included in the record of this proceeding.<sup>10</sup> A letter from Representative Jared Huffman to Postmaster General Megan J. Brennan, dated July 31, 2017, in support of the Rio Nido community is included in the record of

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<sup>3</sup> Order No. 3989, Notice and Order Accepting Appeal And Establishing Procedural Schedule, June 30, 2017.

<sup>4</sup> United States Postal Service Motion to Dismiss Proceedings, July 10, 2017 (Motion).

<sup>5</sup> Public Representative Response in Support of United States Postal Service Motion to Dismiss Proceedings, July 20, 2017 (PR Response).

<sup>6</sup> Petitioners' Response to United States Postal Service Motion to Dismiss Proceedings, July 20, 2017 (Petitioners' Response).

<sup>7</sup> Chairman's Information Request No. 1, July 24, 2017.

<sup>8</sup> Responses of the United States Postal Service to Questions 1-4 of Chairman's Information Request No. 1, August 8, 2017 (Responses to CHIR No. 1).

<sup>9</sup> Petitioners' Response to United States Postal Service Responses to Questions 1-4 of Chairman's Information Request No. 1, August 24, 2017.

<sup>10</sup> Letter Received from Lynda Hopkins, Fifth District Supervisor for Sonoma County Board of Supervisors, July 24, 2017; Letter Received from Lynda Hopkins, Fifth District Supervisor for Sonoma County Board of Supervisors, August 21, 2017.

this proceeding.<sup>11</sup> A letter from Robert Giordano, Sheriff-Coroner, Sonoma County Sheriff's Office, dated August 31, 2017, in support of the Rio Nido community is included in the record of this proceeding.<sup>12</sup> The Public Representative filed reply comments which conditionally support the Postal Service's determination.<sup>13</sup>

### III. BACKGROUND

Rio Nido is an unincorporated area located in Sonoma County, California. It is served by the Rio Nido, CA Community Post Office (CPO), a contractor-operated facility. Motion at 2. A CPO is:

[a] contract postal unit that provides service in a community where an independent Post Office has been discontinued. A CPO bears its community's name and ZIP Code as part of a recognized mailing address.<sup>14</sup>

In April 2016, the contractor operating the Rio Nido CPO submitted a request to terminate the contract to operate the facility. For a period of time thereafter, until June 2016, postal employees from the Guerneville Post Office operated the CPO and continued to provide service to Rio Nido customers.

The Postal Service subsequently decided to move the Post Office Boxes located at the Rio Nido facility to the Guerneville Post Office, located 2.1 miles from the Rio Nido CPO. Motion at 3. Most of the Post Office Boxes were Group E boxes provided at no cost to the customer. Responses to CHIR No. 1, question 1. The Postal Service stated that there are to be no changes to customer Post Office Box numbers or mailing addresses once the Post Office Boxes are moved. Motion at 3. Customers may also

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<sup>11</sup> Letter Received from U.S. Representative Jared Huffman, CA-2, August 8, 2017.

<sup>12</sup> Letter Received from Robert Giordano, Sheriff-Coroner of Sonoma County, CA, September 1, 2017.

<sup>13</sup> Public Representative Reply Comments Conditionally Supporting Postal Service Determination, August 14, 2017 (PR Reply Comments).

<sup>14</sup> Publication 32, *Glossary of Postal Terms*, July, 2013, at 45 (available at <http://about.usps.com/publications/pub32.pdf>).

obtain service at the Monte Rio (5.0 miles away), Villa Grande (7.5 miles away), and the Forestville (7.5 miles away) Post Offices. *Id.*

Rural carriers do not provide service to Rio Nido customers (with ZIP Code 95471). Motion at 7. This decision is based, in part, on road conditions, density of delivery points and workload considerations. Responses to CHIR No. 1, question 1. The Postal Service was unable to provide an estimate of the number of delivery points that would be required to serve Rio Nido customers not currently receiving delivery service. Responses to CHIR No. 1, question 2.

The Postal Service asserts that use of Cluster Box Units (CBUs) is not feasible because of safety and security concerns, and that some areas are prone to flooding that would make CBUs inaccessible. *Id.*

The Postal Service plans to expand service at the Guerneville Post Office by adding Saturday window hours and parcel lockers. Motion at 7. The Postal Service asserts that a plan to install 24/7 keyed access to the lobby has been implemented. Responses to CHIR No. 1, question 3.

#### IV. PARTICIPANT PLEADINGS

Petitioners allege that the Postal Service failed to follow established procedures for closing post offices in reaching its final determination to close the Rio Nido CPO. Petition at 1. They assert that the Postal Service delivered notice of the closing to all Post Office Box holders on June 15, 2017. The notice stated that postal services would terminate on June 20, 2017, and that the Post Office Boxes would be moved to the Guerneville Post Office on June 30, 2017. *Id.* Petitioners contend that this violates the requirements to provide 60 days' notice, provide an opportunity for public comment, and provide an option for official complaint at either the local or district post offices. *Id.* They also contend that the Postal Service's determination is in violation of the requirement to "provide a maximum degree of effective and regular postal services to

rural areas, communities, and small towns where Post Offices are not self-sustaining.”<sup>15</sup> The remainder of the Petitioners’ arguments summarize the additional burdens that the Postal Service’s decision will impose on the Rio Nido community.

Petitioner’s also filed an Amended Petition which explains that Rio Nido customers are not eligible for carrier service, and that the Rio Nido CPO is the sole source of postal services for Rio Nido. Amended Petition at 1.

The Postal Service filed a motion to dismiss the proceedings. It argues that “the scope of section 404(d)(5) is limited to the discontinuance of Postal Service-operated ‘Post Offices’ and does not apply to contractor-operated retail facilities, which are not owned or operated by the Postal Service.” Motion at 1. The Postal Service views Rio Nido as a contract issue which it asserts is outside the scope of section 404(d)(5), and thus outside the jurisdiction of the Commission. *Id.* at 2. Finally, the Postal Service asserts that Rio Nido is similar to other contractor-operated facilities where the Commission has declined to entertain appeals.<sup>16</sup>

The Postal Service discusses the Commission’s *Knob Fork* decision where the Commission remanded a Postal Service decision to close a CPO located in Knob Fork, WV because it was the only retail postal facility serving the community (“sole source” standard).<sup>17</sup> The Postal Service compares this decision with two subsequent decisions, *Alplaus* and *Careywood*, where the Commission applied the sole source standard and found that it did not apply.

The Postal Service states it provided the customers of Alplaus notice of the Postal Service’s decision to terminate the contract for the Alplaus contractor-operated facility, and that service would be available at the nearby Rexwood Postal Office (approximately 1 mile away and 5 minutes driving time). Motion at 6. The Postal

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<sup>15</sup> *Id.* at 2, see 39 U.S.C. § 101(b). Petitioners also allege violations of the National Environmental Policy Act. This Act is outside the jurisdiction of the Commission.

<sup>16</sup> See Docket Nos. A2012-88 (Alplaus Post Office, Alplaus, NY); A2015-1 (Careywood Post Office, Careywood, ID).

<sup>17</sup> 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*).

Service contends the Commission concluded that section 404(d) did not apply under the “sole source” standard because Alplaus customers would be served by the nearby Rexwood facility, and through numerous other retail service options in the area. *Id.*

The Postal Service states that the customers of Careywood were informed of its decision not to renew the contract for the Careywood, ID contractor-operated facility, and that Post Office Box service would be available at the Athol, ID, Post Office (located 7 miles away). *Id.* The Postal Service summarizes that the Commission referred to the availability of Post Office Box service at the Athol Post Office, the availability of rural carriers, and the availability of usps.com in ruling that Careywood was not the “sole source” of postal services for the community. *Id.* at 7.

In comparison, the Postal Service states that although rural carriers do not provide service to Rio Nido customers, service will be available at the Guerneville Post Office (located 2.1 miles away). *Id.* It further plans to make the Guerneville Post Office accessible 24/7, hold Saturday window hours, and add parcel lockers. *Id.* Based on this comparison, the Postal Service contends that the Rio Nido CPO is not the sole source of postal services for the Rio Nido community.

In response to the Motion, Petitioner’s argue that “[i]n case after case, the Commission has reaffirmed its view that CPOs are covered by Section 404(b).” Petitioners’ Response at 1. Furthermore, the Postal Service’s own determinations represented in its handbooks that CPOs are not subject to section 404(b) is not law. *Id.* at 2. Additionally, Petitioners argue that the facts are different in Rio Nido than they were in *Careywood*. They state that Careywood customers were eligible for carrier service and were provided 24-hour access to their mail. This is not the case for Rio Nido customers. *Id.* at 3. Delivery service is not being offered and the substitute Guerneville Post Office has limited hours. *Id.* Furthermore, the Rio Nido CPO is the only post office within more than 15 miles with Saturday window service.<sup>18</sup>

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<sup>18</sup> *Id.* Petitioners also respond to the Postal Service’s arguments concerning the Commission granting of a stay of the closure until the appeal is resolved. Because the Commission does not assert jurisdiction over this matter, the request to stay the closure is moot.

Based on the original information available in this proceeding, the Public Representative supported the Postal Service's motion to dismiss. He stated that "[t]he Commission continues to hold the view that closure of a CPO does not constitute, as matter of law, a 'closing' of 'consolidation' for the purposes of section 404(d) except where the CPO is the 'sole source of postal service to the affected community.'" PR Response at 3; *citing* Careywood at 9. He concludes that based on the facts, it appears the Rio Nido CPO is not the sole source of postal services available to the community. *Id.* at 5-6. However, he does not believe that Rio Nido customers were provided adequate notice concerning the Postal Service's plans. He states that "[c]learly, from a customer relations standpoint, the closing was unsatisfactory." *Id.* at 7.

After the Postal Service filed its responses to CHIR No. 1, the Public Representative filed reply comments. He states:

Based on the Postal Service's responses to CHIR No. 1, the Public Representative is not convinced the Postal Service has demonstrated, yet, that the lack of home delivery service following the closure of the Rio Nido CPO will conform to Postal Service delivery policies or that those residents without home delivery will receive adequate service. Unless the lack of home delivery service is justified as consistent with Postal Service policies and similar to treatment of customers throughout the nation, the lack of home delivery distinguishes this case from *Careywood* and the Rio Nido CPO should be considered the sole source of retail services to the community.

PR Reply Comments at 3.

The Public Representative also was not satisfied with the Postal Service's explanation for not installing CBUs allegedly because they would not be safe or secure in the area. *Id.* at 5. Furthermore, he was not satisfied with the Postal Service's explanations for not establishing a new delivery route because it would be costly, or that delivery would be hindered by road conditions in the area. *Id.* at 5-6. He concluded by conditioning his support of the Postal Service's motion to dismiss on the provision of "home delivery to all or virtually all of Rio Nido residents, or upon a satisfactory

demonstration by the Postal Service that the lack of home delivery service in part of Rio Nido is consistent with Postal Service policies.” *Id.* at 7.

## V. COMMISSION ANALYSIS

The Commission’s remedial authority in post office closing or consolidation appeals is prescribed by the statute and is limited to the review of the final determination and the underlying record developed by the Postal Service to close or consolidate post offices. 39 U.S.C. § 404(d)(5). In those cases where the Commission does have authority to review the administrative record affiliated with Postal Service decisions to close or consolidate post office facilities, the Commission’s role upon receipt of an appeal is specifically defined. That limited authority is expressed in the language of 39 U.S.C. § 404(d)(5)(C), “[t]he Commission may affirm the determination of the Postal Service or order that the entire matter be returned for further consideration, but the Commission may not modify the determination of the Postal Service. The Commission may suspend the effectiveness of the determination of the Postal Service until the final disposition of the appeal.”

In the case of Rio Nido, as discussed further below, the Commission has not been asked to rule on a final determination to close a traditional post office, but rather it has been asked to rule on a final determination to close a CPO. This is an important distinction as the Commission, through over 30 years of precedent, has established that the Postal Service’s decision to close or consolidate a CPO is only within the Commission’s jurisdiction if the CPO is the sole source of postal services to the affected community. *See Knob Fork; Careywood.*

The “sole source” test that the Commission has consistently used to determine its jurisdiction to hear an appeal of a Postal Service decision to close or consolidate a CPO is unique to non-Postal Service-operated contract offices like a Contract Postal Unit (CPU) or CPO. The limitation on the Commission’s jurisdiction to hear the appeal of a CPU or CPO does not affect the Commission’s authority to hear appeals of the closure or consolidation of any of the nearly 32,000 Postal Service-operated retail

facilities, including post offices, stations, and branches that may be located in rural, urban, or suburban areas throughout the nation. Moreover, it is not the same as the standard for whether a Postal Service decision to arrange retail offerings within a community is reviewable by the Commission, which is a different jurisdictional test that the Commission has applied to stations and branches.<sup>19</sup>

For the Commission to assert jurisdiction over the instant appeal, the Commission must find that Rio Nido CPO falls within the “sole source” exception espoused in *Knob Fork* and its prodigy. Otherwise, the Commission does not have jurisdiction to hear an appeal concerning this CPO.

*Knob Fork*, *East Elko Station*,<sup>20</sup> *Alplaus*,<sup>21</sup> and *Careywood*<sup>22</sup> are the only Commission cases that discuss the elimination of a CPO or CPU serving a community.<sup>23</sup> Other cases that implicate the elimination of a CPO or CPU specifically involved either the closure of a post office for consolidation into a CPO,<sup>24</sup> or a closure of a station or branch facility as part of a plan to realign services within the community.<sup>25</sup>

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<sup>19</sup> See, e.g., Docket No. A2011-90, Order No. 1159, Order Dismissing Appeal, January 20, 2012, at 9-11.

<sup>20</sup> Docket No. A2010-3, Order Dismissing Appeal, June 22, 2010 (Order No. 477).

<sup>21</sup> Docket No. A2012-88, Order Dismissing Appeal, March 21, 2012 (Order No. 1293).

<sup>22</sup> Docket No. A2015-2, Order Dismissing Appeal, May 27, 2015 (Order No. 2505).

<sup>23</sup> Two other cases follow, without discussion, the *Knob Fork* determination that closing procedures for CPU/CPOs must be consistent with section 404(b). See Docket No. A84-5, *In re Foraker, Indiana 46525*, Commission Opinion Remanding Determination for Further Consideration 39 U.S.C. 404(b)(5), March 6, 1984. See also Docket No. A85-17, *In re Ranchita, California 92066*, Commission Opinion Remanding Determination for Further Consideration 39 U.S.C. 404(b)(5), June 12, 1985.

<sup>24</sup> *Green Mountain*; Docket No. A94-1, *In re Waka, Texas 79093*, Commission Opinion Affirming Decision Under 39 U.S.C. § 404 (b), February 4, 1994 (Waka); Docket No. A94-3, *In re Inavale, Nebraska 68952*, Commission Opinion Affirming Decision Under 39 U.S.C. § 404 (b), March 15, 1994 (Nebraska); Docket No. A94-8, *In re Benedict, Minnesota 56436*, Commission Opinion Remanding Decision Under 39 U.S.C. § 404 (b), August 3, 1994 (Minnesota).

<sup>25</sup> See Docket No. A2007-1, Order No. 37, Order Dismissing Appeal on Jurisdictional Grounds, October 9, 2007.

In *Knob Fork*, the Commission applied discontinuance requirements of section 404(b)<sup>26</sup> because the CPO was the “only retail postal facility serving the community.” See *Knob Fork* at 1.

The *East Elko Station* appeal was dismissed by the Commission where the station being closed was in close proximity, 1.5 miles away, from a post office where Post Office Boxes were available and other retail services might be obtained. Order No. 477 at 7.

In *Alplaus*, the availability of a nearby post office approximately 1 mile away (about 5 minutes driving time) and numerous other retail service options led the Commission to conclude the Alplaus CPO could not be considered the sole source of postal service for Alplaus residents. Order No. 1293 at 6.

In *Careywood*, the Commission did not find the Careywood CPU as the sole source because the Postal Service was offering customers regular service by rural carrier delivery, and retail postal services, including replacement Post Office Boxes, from the Athol Post Office (about 7 miles and 7 minutes driving time). Order No. 2505 at 11. Postal services were also available in Cocolalla, 8.2 miles away, Sagle, 12.6 miles away, and Bayview, 5.5 miles away. *Id.* at 11-12.

The Postal Service is moving the Post Office Boxes located at the Rio Nido facility to the Guerneville Post Office, located 2.1 miles from the Rio Nido CPO. Motion at 3. This distance is greater than the 1 mile to another post office in Alplaus, but less than the 7 miles to another post office in Careywood where the Commission did not find jurisdiction existed. Although this fact alone is not decisive, it weighs against the Commission’s application of the sole source exception. Furthermore, the Postal Service asserts that it is taking steps to making the Guerneville Post Office even more

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<sup>26</sup> The Postal Accountability and Enhancement Act (PAEA) redesignated 39 U.S.C. § 404(b) as 39 U.S.C. § 404(d) (PAEA). PAEA § 1010(e).

accessible to Rio Nido customers such as establishing Saturday window service, installing parcel lockers, and providing 24/7 access.

There is no contention that Rio Nido customers will not have access to the limited postal services provided by usps.com, or alternative stamp purchasing options such as grocery stores. These facts also weigh against the Commission's application of the sole source exception.

The one item that does differentiate Rio Nido from *Alplaus* and *Careywood* is the provision of carrier service. The Postal Service asserts Rio Nido customers will not be provided with carrier service, whereas carrier service is available for Alplaus and Careywood customers. The Commission is divided on the importance of this factor given the proximity of the Guerneville Post Office to the Rio Nido community.

After weighing the above factors, the Commission is unable to conclude that the Rio Nido CPO is the sole source of postal services to the Rio Nido community. Therefore, by operation of law, the Commission lacks jurisdiction to hear the appeal of the closing of the Rio Nido CPO, and the Postal Service's final determination to close the Rio Nido CPO stands. However, this result should not be equated with approval of the Postal Service's actions concerning the Rio Nido community. Reasonable efforts to provide timely notice, obtain thoughtful comments from customers, and explore alternatives to the provision of postal services to the Rio Nido community should have been undertaken prior to closing the Rio Nido CPO.

*It is ordered:*

By operation of law, the Commission lacks jurisdiction to hear the appeal of the closing of the Rio Nido CPO. The Postal Service's final determination to close the Rio Nido CPO stands.

By the Commission.

Ruth Ann Abrams  
Acting Secretary

Concurring Opinion of Chairman Taub and Vice Chairman Acton  
Dissenting Opinion of Commissioner Hammond and Commissioner Langley

CONCURRING OPINION OF CHAIRMAN ROBERT G. TAUB  
AND  
VICE CHAIRMAN MARK ACTON

The matter now before the Commission is whether to grant the Postal Service's motion to dismiss. We answer this question based on our view of the law and Commission precedent regarding Contract Postal Units (CPUs) and Community Post Offices (CPOs), which are not Postal Service-operated facilities.<sup>1</sup> We understand the community's concerns, but the question for us is one of law and Commission precedent of dismissing similar closures of non-Postal operated facilities. Based on that framework, we find that the Postal Service's motion to dismiss should be granted. To deny the motion to dismiss in this case would be unfair and arbitrary given the decisions to dismiss similar closures.

*Commission's authority to review closures of facilities not operated by the Postal Service.* The Commission's authority to review post office closings is provided by 39 U.S.C. § 404(d)(5). That 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

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<sup>1</sup> See Postal Operations Manual, Issue 9, July 2002, section 123.126, Updated With Postal Bulletin Revisions Through October 31, 2013 (POM); see also, Publication 32 – Glossary of Postal Terms, July 2013, available at <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.” A CPO is a contractor-operated facility that provides services in small communities where an independent post office has been discontinued; a CPO 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.

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

Last year, the Commission conducted a public inquiry (Docket No. PI2016-2) to examine the Commission's long standing precedent as it related to when or if the Commission should have jurisdiction to review the closing or consolidation of a CPU or CPO. The Commission concluded the extensive public inquiry by leaving its existing interpretations unchanged.

CPUs and CPOs are types of contractor-operated (as opposed to Postal Service-operated) facilities. See 39 C.F.R. § 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. While CPU/CPOs generally do not fall within the scope of 39 U.S.C. § 404(d), in select circumstances when the Commission determines that a CPU/CPO is the sole source of postal retail services to a community, it has found that section 404(d) (both the statutory intent and language) justifies the Commission exercise of review authority over sole source CPU/CPO closures and consolidations.

For more than 30 years, when determining whether a CPU/CPO is the sole source of postal retail services in a community, the Commission has considered other sources of retail postal services to the community at issue. For example, in Alplaus, since there was a post office located approximately 1 mile from the Alplaus CPO and there were over 20 alternate access locations within a 5-mile radius, the Commission concluded that the Alplaus CPO was not the "sole source" of postal services for the community.<sup>2</sup> The Commission determined that since the Alplaus CPO was not the sole

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<sup>2</sup> See Docket No. A2012-88, Order No. 1293, Order Dismissing Appeal, March 21, 2012, at 6.

source of postal services for the community, section 404(d) did not apply. In more than three decades since the sole source standard was set forth by the Commission, there have been advancements in technology, creation and expansion of commercial business centers, evolution of the postal retail network, and different modes of transportation. The Commission has continued to apply a modern sole source framework using a reasonable standard based on the statute and legislative intent.

The sole source standard is not based simply on whether a facility is the only postal retail service facility located in a community. The standard is whether that retail facility is the sole provider of services to a community. This standard allows the Commission to recognize ongoing developments in travel, communication, and other services that may impact a community in how it receives its postal services. In Careywood, ID, a recent Commission decision to apply the sole source standard, the Commission recognized that approved shippers, other contract units, and automated postal centers may not be currently available. However, it acknowledged that other categories of postal services, such as another postal retail facility approximately a 7 minute drive away, rural carriers, and the Internet are available.<sup>3</sup> The Commission noted that a facility in past decades that previously may have been considered the sole source may no longer be the sole source in part due to improved road safety, provisions of services by alternate means, and migration of business services to different areas. *Id.* The Commission also referenced Congress's requirement in section 302 of the Postal Accountability and Enhancement Act of 2006, that the Postal Service develop a plan for the expansion of access to alternate retail services including the Internet and non-post office access channels. *Id.* The Commission also held that while the Careywood CPU was the only physical postal retail provider in the community, it was not the community's only source for postal retail services, therefore section 404(d) did not apply. *Id.* at 13. The Commission explained that the closure of the Careywood CPU did not eliminate the Careywood community's access to postal retail services. *Id.*

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<sup>3</sup> Docket No. A2015-2, Order No. 2505, Order Dismissing Appeal, May 27, 2015, at 12.

*Rio Nido circumstances similar to recent CPU/CPO dismissals.* We find that circumstances surrounding Rio Nido are similar to the circumstances of other contract office closings at Alplaus, NY, and Careywood, ID, among others, where the Commission dismissed the appeals for lack of jurisdiction. To deny the motion to dismiss in this case would be unfair and arbitrary given the decisions for those other communities.

The Careywood order focused on whether the CPU is the sole source of service to the community, not whether it is the most convenient. On the facts presented by Petitioners and the Postal Service, it appears in this case that the Rio Nido CPO is not the sole source of postal services available to the community. Retail services will continue to be available 2.1 miles away at the Guerneville Post Office. Petitioners object to the lack of Saturday retail services at Guerneville. In response, the Postal Service says Saturday retail services will be introduced at the Guerneville Post Office. Petitioners object that Post Office Box service is available at Guerneville only during regular business hours, but the Postal Service plans for Post Office Box service to be available 24/7 with keyed access to the lobby at the Guerneville Post Office. While Rio Nido remains a community, Petitioners do not assert that businesses in the larger adjacent community of Guerneville do not regularly provide commercial goods and services to the residents of Rio Nido.

As the Commission explained in *Careywood*, even though the CPU is the only retail facility in the community, it cannot reasonably be characterized as the sole source of postal services or retail postal service available to community residents. In this case, the Guerneville Post Office is 2.1 miles from the Rio Nido CPU. Retail services for Careywood customers were available at the Athol Post Office at a distance of approximately 7 miles. Although not discussed by either the Petitioners or the Postal Service, postal services are also available farther along River Road through Guerneville at the Monte Rio Post Office, 4.9 miles from the Rio Nido CPO. In *Careywood*, the Commission noted that additional postal services were available at three locations

farther away than that; approximately 8.2 miles, 12.6 miles, and 5.5 miles. Also relevant in the *Careywood* decision (as here) is that services are also available through usps.com.

Legally required mode of delivery. Petitioners seek to distinguish the *Careywood* decision (where carrier delivery was available to customers) because, they say, Rio Nido customers do not receive carrier delivery. Chairman Taub issued a Chairman's Information Request in an attempt to clarify delivery details. According to the Postal Service response, delivery service has never been provided to Rio Nido residents in ZIP Code 95471, and these residents have been served through Post Office Box service provided by a contractor-operated retail unit. Most of the Post Office Boxes used by Rio Nido residents are Group E boxes provided at no cost to the customer. The Postal Service asserts that Rio Nido customers will continue to receive no fee Group E Post Office Box delivery service from the nearby Guerneville Post Office 2.1 miles away, and now have 24-hour access, 7 days a week, to mail receptacles. The Postal Service also notes that the provision of service through the Guerneville Post Office has enabled customers to keep their ZIP Code, original Post Office Box numbers, and the "Rio Nido" community name. Therefore, the mode of delivery for these customers will not change, and access to their mail receptacles will be available 24/7 rather than during more limited hours and days.

The Postal Service established a nationwide no fee Group E Post Office Box delivery within the last 20 years as a result of Commission urging. In a mail classification case, the Commission found it inequitable for the Postal Service to deny non-city mail recipients, ineligible for carrier delivery, a free Post Office Box when city mail recipients were given free delivery.<sup>4</sup> The Commission suggested that the Postal Service reconsider its position. Then in a subsequent rate proceeding, the Postal Service agreed to provide free Post Office Boxes to those customers ineligible for

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<sup>4</sup> See Docket No. MC96-3, Opinion and Recommended Decision, April 2, 1997.

carrier service. More than a million Americans living in rural areas today receive their mail through delivery to no fee Post Office Boxes.

According to a 2008 Commission study of the Universal Service Obligation (USO), there were “1.365 million ‘free’ post office boxes for rural addressees in areas served by [certain post offices] that do not have the option of receiving their mail via home delivery.”<sup>5</sup> George Mason University (GMU) prepared an analysis for that Commission report, noting differences in how delivery is mandated in the European Union (EU) versus the United States. As the Commission wrote in the 2008 report:

GMU observes that requiring delivery to these addressees unless the addressee chooses to receive post office box delivery could be regarded as a potential element of the USO, as it is in the EU. Assuming a worst-case scenario in which all eligible addressees would choose street delivery, GMU estimates that the Postal Service profits would decrease by \$101 million if this were added to the USO. This cost would include the cost of providing retail transactions as well as 6-day-a-week delivery to newly provided stand-alone roadside boxes.

In its October 2008 Report on the Universal Postal Service and the Monopoly, at 27-28, the Postal Service argues that the position of the EU regarding a right to delivery-to-the-address is impractical in the United States due to its more varied geography and large areas in which population density is extremely low. It explains that management follows a policy of offering every residential customer one form of free delivery—carrier delivery, general delivery, or a no-fee post office box. It argues that no additional mandate is necessary.

The Commission agrees with the Postal Service that conditions in the United States make it operationally and financially impractical to mandate carrier delivery to every residential customer. Accordingly, it does not recommend that it be viewed as an element of the USO.

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<sup>5</sup> Report on Universal Postal Service and the Postal Service Monopoly, December 19, 2008, at 141 (Report)

Report at 141-42.

The Commission's view is legally grounded in law as other excerpts of the 2008 Report make clear:

#### The USO's Mode of Delivery Obligation

Section 404(a)(1) *authorizes* the Postal Service to deliver mail and section 403(a) *requires* the Postal Service to deliver mail. However, neither these sections, nor any other section of title 39, prescribes the manner in which delivery must be made. The Postal Service therefore has the discretion to deliver by one or more of several modes: door delivery; curbside delivery; cluster box delivery; roadside mailboxes; post office box delivery; or general delivery. In short, the Postal Service exercises considerable flexibility in determining how it delivers the mail.

*Id.* at 29.

No legal obligation identifies a specific mode of delivery, so the Postal Service is free to determine the delivery mode.

#### The USO's Access Obligation

Section 403(b)(3) requires the Postal Service to "establish and maintain postal facilities of such character and in such locations, that postal patrons throughout the Nation will, consistent with reasonable economies of postal operations, have ready access to essential postal services." This requirement is, like other aspects of the USO, broadly formulated and provides the Postal Service with considerable latitude to exercise discretion.

First, the "postal facilities" that section 403(b)(3) directs the Postal Service to establish and maintain do not have to be post offices or any other particular type of facility. Nor do these facilities have to be located in any particular place. They need only be of "such character" and "in such locations" that postal

patrons “have ready access” to “essential postal services.” Neither “ready access” nor “essential postal services” are defined by the statute. The result is that section 403(b)(3) gives the Postal Service considerable discretion to determine both the type and location of postal facilities.

Second, in exercising its discretion to select and locate facilities giving “ready access” to patrons “throughout the Nation,” the Postal Service has the authority to select and locate facilities which are “consistent with reasonable economies of postal operations.”

Within the general parameters established by section 403(b)(3) for all “postal facilities” are provisions applicable specifically to “post offices.” Section 404(a)(3) of title 39 gives the Postal Service the power generally “to determine the need for post offices ... and to provide such offices ... as it determines are needed ....”

*Id.* at 26-27.

In summary, the question before the Commission is whether to grant the Postal Service’s motion to dismiss. Based on our view of the law and Commission precedent of dismissing similar closures of certain non-Postal Service operated facilities, we would grant the Postal Service’s motion to dismiss. To deny the motion to dismiss in this case would be unfair and arbitrary given the decisions to dismiss similar closures.

DISSENTING OPINION OF COMMISSIONER TONY HAMMOND  
AND  
COMMISSIONER NANCI E. LANGLEY

We dissent from the Commission's order, because we find that the Rio Nido CPO is the sole source of mail delivery for Rio Nido residents who do not receive carrier delivery. We would remand this case to the Postal Service to apply the same procedures to the Rio Nido CPO's closing as it does to the discontinuance of post offices.

In its motion to dismiss, the Postal Service argues that the Commission lacks jurisdiction over all closings of contractor-operated units. This ignores the Commission's clear precedent – set forth in *Knob Fork*, then in *East Elko Station*, then again in *Alplaus*, and then finally in *Careywood* – that the Commission exercises jurisdiction over any closing where a contractor-operated unit serves as the sole source of postal services for a particular community. While such circumstances may be rare, they do arise from time to time.

Importantly, the previous cases where the Commission applied a sole source analysis concerned retail services, whereas Rio Nido concerns mail delivery. So the alternative forms of service cited by the Postal Service, and by the Commission's order, are not alternatives at all. A person cannot receive mail at usps.com. A person cannot receive mail at a grocery store. The Rio Nido CPO was the sole source of delivery for residents of Rio Nido, and as such, its closing should have been treated just as the closing of any traditional post office.

Beyond the legal question before us is the issue of the Postal Service's universal service obligation. The Postal Service prides itself on the lengths it will go to deliver mail – mule trains into the Grand Canyon, flat-bottomed pole boats through the Louisiana bayous, parachute drops from airplanes over Alaska. Yet confronted with more benign obstacles in Rio Nido – seasonal flooding that is no worse than the flooding in nearby communities – the Postal Service states that it is absolutely unable to find any dry plot of land on which to install simple cluster box units. It says this without making any showing that it ever even looked into the possibility.

If the Postal Service had been responsive to the Commission's basic questions of why Rio Nido residents are not entitled to receive mail delivery, we possibly could have agreed with it closing the CPO without going through discontinuance procedures. But the Postal Service's perfunctory responses to our information request did not provide answers to our questions.

While the Commission does not have the statutory power to keep postal facilities from being closed, it is disappointing that the Postal Service has not been responsive to Rio Nido residents' and public officials' offers to work with it to arrange an alternative delivery method.