

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Investigation of Suspended Post Offices

Docket No. PI2010-1

INITIAL COMMENTS OF THE PUBLIC REPRESENTATIVES

(March 2, 2010)

The Commission instituted this public inquiry on November 9, 2009.¹ The undersigned have been assigned to serve as Public Representatives.² Initial comments are due in this matter on March 2, 2010, and reply comments are due on April 1, 2010.³ Pursuant to Order No. 335, the Public Representatives hereby file their initial comments.

I. THE CURRENT INQUIRY

The public inquiry in this docket is an outgrowth of an earlier proceeding involving the emergency suspension of postal operations at the Hacker Valley, West Virginia Post Office.⁴ Order No. 335 at 1. In *Hacker Valley*, questions were raised by customers affected by the emergency suspension and by the Public Representative regarding the nature of the action taken by the Postal Service. Specifically, they questioned whether

¹ PRC Order No. 335, Notice and Order Providing an Opportunity to Comment (November 9, 2009) (Order No. 335).

² Order No. 335 initially designated Richard A. Oliver as Public Representative and indicated that additional Commission Staff would be assigned to assist. *Id.* at 4. A second member of the Commission's Staff, Mr. John P. Klingenberg, was subsequently assigned to assist in this matter. Since that assignment, Messrs. Oliver and Klingenberg have served jointly as Public Representatives.

³ Initial and reply comments were originally due on January 15 and February 16, 2010, respectively. At the request of the Public Representatives, those deadlines were subsequently extended to the currently effective dates.

⁴ Hacker Valley Post Office, Hacker Valley, WV 26222 (Retha Casto, Petitioner), Docket No. A2009-1 (*Hacker Valley*)

the operations of the Hacker Valley Post Office had been suspended or, in fact, discontinued.⁵ The importance of this distinction was recognized by the Commission:

These statutory provisions [*i.e.* 39 USC 101(b), which requires the Postal Service to “provide a maximum degree of effective and regular postal services,” and 39 USC 404(d)(1), which establishes requirements for closing or consolidating post offices] establish as national policy that citizens should have the opportunity to convey their concerns to the Postal Service before their local post office is closed, and most important, that the Postal Service will fairly consider those concerns prior to making a decision to close that facility.” [emphasis added].

Id. at 4. This distinction also plays a crucial role in determining whether postal service patrons can seek Commission review of the Postal Service’s actions. The discontinuance of a Post Office can be appealed. A suspension cannot.⁶

In *Hacker Valley*, the Commission found that Postal Service’s claimed need to impose an emergency suspension was undermined by the fact that the expiration of the lease relied upon by the Postal Service as the basis for the emergency suspension was known at least two full years prior to expiration. Order No. 319 at 7. Nevertheless, on the record before it, the Commission was unable to find that the Postal Service was intentionally circumventing the policies of 39 USC 404(d).⁷

Because information developed during the *Hacker Valley* proceeding “strongly suggests that the Postal Service is using its suspension authority to avoid the explicit Congressional instructions to hear and consider the concerns of postal patrons before closing post offices”⁸ and “that such a practice may be ongoing”,⁹ the Commission declared its intent “to develop a more complete record that would enable it to satisfy its responsibility under the Postal Accountability and Enhancement Act [PAEA], section 701, to submit reports to the President and Congress recommending legislation necessary to improve the effectiveness of postal laws of the United States.” *Id.*

Shortly thereafter, the Commission instituted the public inquiry in this docket to develop the more complete record it desired. Comments from the public have been

⁵ See Order No. 319, Order on Appeal of Hacker Valley, West Virginia Post Office Closing, October 19, 2009 (Order No. 319) at 6.

⁶ See United States Postal Service Answer in Opposition to the Motion of the Public Representative to Hold Proceeding in Abeyance, *Hacker Valley Post Office*, Docket No. A2009-1 (July 29, 2009).

⁷ The Commission noted elsewhere in its order that the Postal Service had decided to initiate a discontinuance study. Order No. 319 at 8.

⁸ *Id.* at 8.

⁹ *Id.* at 10.

solicited¹⁰ and a Public Representative designated.¹¹ As part of its duties, the Public Representative was instructed “to work with the Postal Service to develop an accurate representation of how written procedures related to the emergency suspension of Post Offices are being adhered to in actual practice” and to review subsequent Postal Service action related to the relocation or closing of Post Offices that were suspended due to the expiration of the lease for the facility.”¹² *Id.* at 4.

In addition to the procedures adopted by Order No. 335 and the instructions given to the Public Representative, the Commission’s Office of Public Affairs and Government Relations has solicited comments from potentially interested persons.¹³

II. BACKGROUND

The authority of the Postal Service to establish, operate, and discontinue Post Office facilities and services can be found in the general powers enumerated in 39 USC 401 and in the specific powers set forth in 39 USC 404(a). Balanced against these powers are the duties enumerated in 39 USC 403, including “the responsibility ...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.” 39 USC 404(b)(3). In carrying out its responsibilities, the Postal Service is limited in its ability to close Post Offices by the provisions of section 101(b), which require that:

[t]he Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining ... [and that] ... [n]o small post office shall be closed solely for operating at a deficit, it being the specific intent of the Congress that effective postal services be insured to residents of both urban and rural communities.

¹⁰ Order No. 335 at 4, Ordering Paragraph 2.

¹¹ *Id.* at 4, Ordering Paragraph 4; and *see also* note 2, *supra*.

¹² The public inquiry in this docket is limited to the consideration of Post Office suspensions due to lease expirations. Order No. 335, Ordering Paragraph 1. Emergency suspensions can also, of course, be imposed for other reasons, such as natural disasters and destruction of facilities by fire. *See* Section III.A., *infra*.

¹³ Responses to PAGR’s outreach letters are identified on the PRC Public Inquiry Log, which can be accessed through the Home Page of the Commission’s website, www.prc.gov.

A parallel limitation can be found in the so-called “standard USO [Universal Service Obligation] rider” attached to each Postal Service appropriations bill since 1985.¹⁴ That rider requires that none of the funds provided in the annual appropriations act be used to consolidate or close small rural and other small Post Offices.

On January 1, 1994, the Postal Service adopted the Post Office Discontinuance Guide, Handbook PO-101 (Discontinuance Handbook).¹⁵ U.S. Gen. Accounting Office, U.S. Postal Service: Information on Post Office Closures, Appeals, and Affected Communities, GAO/GGD-97-38BR (March 11, 1997) at 3. The Handbook provides guidance regarding the proper procedures for suspending¹⁶ and closing¹⁷ a Post Office.

III. THE SUSPENSION AND DISCONTINUANCE PROCESS

A. Emergency Suspensions

As indicated by the statistics cited below, the Postal Service has relied extensively upon its emergency suspension authority. From time-to-time, the suspension process has been discussed by the General Accountability Office either directly, or in connection with related matters of congressional interest.¹⁸

In order to assess how this authority has been used and whether the Postal Service has followed the procedures set forth in the Discontinuance Handbook, the Public Representatives believe that it is appropriate to begin with a brief summary of those procedures as established by the Discontinuance Handbook.

¹⁴ See Act of Dec. 19, 1985, Pub. L. No. 99-190, §§ 101(h), 99 Stat. 1185, 1291 (enacting conference report, H.R. Rep. No. 349, 99th Cong. 1st Sess. (Oct. 31, 1985).

¹⁵ Throughout these comments, specific sections of the Discontinuance Handbook are referred to as “Handbook Section ___.”

¹⁶ Discontinuance Handbook, Chapter 6 - Special Considerations, Subchapter 61- Emergency Suspensions. Excerpts from Chapter 6 are included in Exhibit A to these comments.

¹⁷ Discontinuance Handbook, Chapter 1 – Introduction, Subchapter 13 – Responsibilities; and Chapter 4 – Transmittals and Headquarters Review/Decision, Subchapter 42 – District Review. Excerpts from Chapters 1 and 4 are included in Exhibit C to these comments.

¹⁸ U.S. Gen. Accounting Office, U.S. Postal Service: Information on Post Office Closures, Appeals, and Affected Communities, GAO/GGD-97-38BR (March 11, 1997); U.S. Gen. Accounting Office, U.S. Postal Service: Information on Emergency Suspensions of Operations at Post Offices, B-276778 (April 23, 1997); U.S. Gen. Accounting Office, Replacing Post Offices With Alternative Services: A Debated But Unresolved Issue, GAO/GGD-82-89 (September 2, 1982); and U.S. Gen. Accounting Office, \$100 Million Could Be Saved Annually In Postal Operations In Rural America Without Affecting The Quality Of Service, GAO/GGD-75-87 (June 4, 1975).

Chapter 6 of the Discontinuance Handbook sets forth the procedures applicable to emergency suspensions. Handbook Section 611 defines “emergency” as follows:

An emergency is an occurrence that constitutes a threat to the safety and health of Postal Service employees or customers or to the security of the mail or revenue. When a situation is tolerated for an extended term or is expected to occur, it probably cannot be classified as an emergency.

Handbook Section 611 also provides a non-exclusive list of circumstances that may justify an emergency suspension. One such circumstance is:

Termination of a lease or rental agreement when other quarters suitable for housing an independent Post Office are not available, especially when the termination is sudden or unexpected.

Under the foregoing provisions, emergency suspensions are not appropriate when the termination of a lease is expected and suitable alternative quarters are available.

The authority to impose an emergency suspension is held by the District Manager with jurisdiction over the Post Office at issue. There are 74 District offices in the Postal System.¹⁹

Several notices are required in order to suspend the operation of a Post Office. Handbook Section 613.1 requires immediate notification of Postal Service Headquarters. The suggested form for that notice is provided is Form 613.1, a form that is included in the Discontinuance Manual. Form 613.1 is attached as Exhibit A.1, hereto. Local officials must also be notified. Handbook Section 613.2. A suggested notice for those notifications is provided by Form 613.2, which is attached hereto as Exhibit A.2. Postal customers are to be notified of the suspension immediately by individual letter. Handbook Section 613.3. The customer notice is to include: the effective date of the suspension; the reason for the suspension; alternative services available; identification of the nearest Post Office and hours of operation; and the name and phone number or a person to contact for more information. The suggested form for the customer letter is included in the Discontinuance Manual as Form 613.3, attached hereto as Exhibit A.3.

¹⁹ Direct Testimony of Kimberly I. Matalik on Behalf of the United States Postal Service (USPS-T-2), Docket No. N2009-1 (Revised July 17, 2009; August 28, 2009; September 16, 2009; and September 29, 2009) at 3.

The various steps in the emergency suspension process are to be documented in several ways. The District Post Office review coordinator, who is among the local officials to be notified of the suspension, is responsible for entering information in a log of Post Office discontinuance actions. Handbook Section 613.2.k. A sample discontinuance log is provided as Form 422, attached hereto as Exhibit C.2. When a Post Office is studied for permanent discontinuance, the review coordinator is required to place a copy of the suspension notice in the official record. Handbook Section 613.2.k. An example of an Official Record Index is provided by Form 134.62e, attached hereto as Exhibit C.1.

In addition to the notification and record keeping requirements, the following actions must be taken: alternative service must be established and a community meeting must be held if time permits (Handbook Section 614); employees must be temporarily reassigned (Handbook Section 615); a Suspension Review Team must be convened to review the suspension decision (Handbook Section 616); the Suspension Review Team is to conduct an onsite visit and to provide a recommendation within 10 business days of the onsite visit to the district manager, national postmaster organizations, and the Postal Service vice president for delivery and retail operations (*Id. See also* Form 616b, attached as Exhibit A.4, hereto).

If the Suspension Review Team recommends against suspension, the Post Office is to be reopened. A suggested form for reopening a Post Office is provided by Form 618 (Exhibit A.5, hereto). If the Suspension Review Team's recommendation supports suspension, the formal discontinuance process is to be initiated. Handbook Section 616.c.

Should a discontinuance process be initiated, Handbook Section 617 of the Discontinuance Handbook requires that a plan of action be sent to Postal Service Headquarters within 90 days of the suspension.

A timeline for the steps in the suspension process is attached hereto as Exhibit B.

B. Discontinuance of a Post Office

The discontinuance process, like the suspension process, is generally commenced by the District Manager. See Handbook Section 132.1, which is attached hereto as Exhibit C.

Chapters 2 through 5 of the Discontinuance Handbook set forth the procedures and suggestions applicable to discontinuance of a Post Office.

Chapter 2 – Decision to Study and Preproposal Investigation

Chapter 3 – The Proposal

Chapter 4 – Transmittals and Headquarters Review/Decision

Chapter 5 – Appeal Procedures

The entire process is to be documented. Handbook Sections 131 and 135.5 require the District Post Office review coordinator to maintain a log of discontinuance actions. The log is to be current and available at all times. *Id.*

Chapter 2 sets forth requirements for conducting a preproposal investigation. Handbook Section 221 identifies nine tasks as preparation for a discontinuance investigation.²⁰ Handbook Section 222 lists six tasks when conducting a pre-proposal onsite investigation.²¹

Chapter 3 provides requirements and suggestions for the District Manager's proposal to discontinue a Post Office. A public notice must be posted for at least sixty days. Handbook Section 342.1 In the case of suspended Post Offices, the posting must be done at the Post Office providing alternative service. *Id.* Public comments must be solicited and comment forms provided. Handbook Sections 342.3 and 342.4. The District Manager's decision to discontinue a Post Office must stand on the record developed during the discontinuance process. Handbook Section 134.61. The record

²⁰ Those tasks include: obtaining a map showing the locations of other nearby Post Offices; consulting city officials for information on growth trends in the community; consulting with the managers of the Post Office under study and nearby offices that may provide alternate services; meeting with local leaders; and encouraging Postal Service and customers to provide their opinions about the investigation for inclusion in the Official Record.

²¹ Those steps include: explaining the discontinuance regulations to the postmaster; meeting with civic leaders; looking for potential alternate quarters; inquiring into community interest and availability of quarters for a Community Post Office.

must be updated and maintained in an accurate and timely manner. *Id.* The District Manager's decision must stand on the record. *Id.*

Chapter 4 governs transmittal of the discontinuance proposal to Postal Service Headquarters. The log of discontinuance actions (Form 422) must be included in the Official Record. Handbook Section 422. The Official Record must contain all information the District Manager has considered. Handbook Section 134.61.

Chapter 5 governs appeals. From the standpoint of customers, there are two important limitations on the decision to discontinue a Post Office that are arguably unavailable available to customers of a suspended Post Office: (1) the prohibition contained in 39 USC 404(d)(4) on discontinuing a Post Office during the sixty days after a written discontinuance determination has been made available to customers; and (2) the authority of the Commission under 39 USC 404(d)(5) to suspend the effectiveness of a discontinuance decision until final disposition of an appeal.²²

According to the Postal Service, a discontinuance study often takes nine months or more to complete. Response of the United States Postal Service to Commission Information Request No. 3, Docket No. A2009-1. See *also* the discontinuance timeline attached hereto as Exhibit C.

IV. COORDINATION WITH THE POSTAL SERVICE

As directed by Order No. 335, the Public Representatives conferred with representatives of the Postal Service in the Office of General Counsel as part of their attempt to obtain information on how the emergency suspension procedure operates in practice. At the request of the Public Representatives, the Postal Service provided an update of the information presented by the Postal Service in the *Hacker Valley* proceeding regarding the identity and status of Post Offices whose operations have been suspended for lease termination.²³ That updated information, which was provided

²² The unavailability of either of these limitations depends, of course, on the observance of a distinction between a "suspension" and a "discontinuance." If, however, a suspension were a *de facto* discontinuance, the Commission could have authority to delay the closing of the Post Office pending disposition of an appeal.

²³ See Response of the United States Postal Service to Commission's Information Request No. 1, Docket No. A2009-1, Question Nos. 6-9 (August 14, 2009). The responses to Question Nos. 6-9 are attached hereto as Exhibit E.

by the Postal Service on a confidential basis, has been designated as Exhibit F (Non-Public) and is being filed as a non-public annex.²⁴

Since providing the information contained in Exhibit F (Non-Public), the Postal Service has filed additional information regarding emergency suspensions in the 2009 Annual Compliance Report (ACR) proceeding.²⁵ That latter information is attached as Exhibit G, hereto. This response includes a summary chart that “indicates revisions to previous information that was sent via PMG letter to the Postal Regulatory Commission on 9/22/2008 and informally to the Public Representative in PRC Docket No. PI2010-1 on 1/15/2010.” However, this list of Post Offices is significantly larger than the one provided in Exhibit F (Non-Public).²⁶

Analysis of the information presented in Exhibit G provides potential insights into how long the process of suspension lasts. The same analysis on a database of Post Offices suspended by lease termination only, as provided in Exhibit F(Non-Public) is provided in Exhibit H (Non-Pubic) being submitted as a non-public annex to these comments.

The following table summarizes the Postal Service data in Exhibit G regarding Post Offices that have been in suspension in the last five years. The offices are categorized by their current status: Suspended, Closed, or Service Restored. The Offices currently in suspension are further categorized by the internal status of the Postal Service process. For each category, the average time the Offices have spent in suspension, as of February 5, 2010, is calculated.

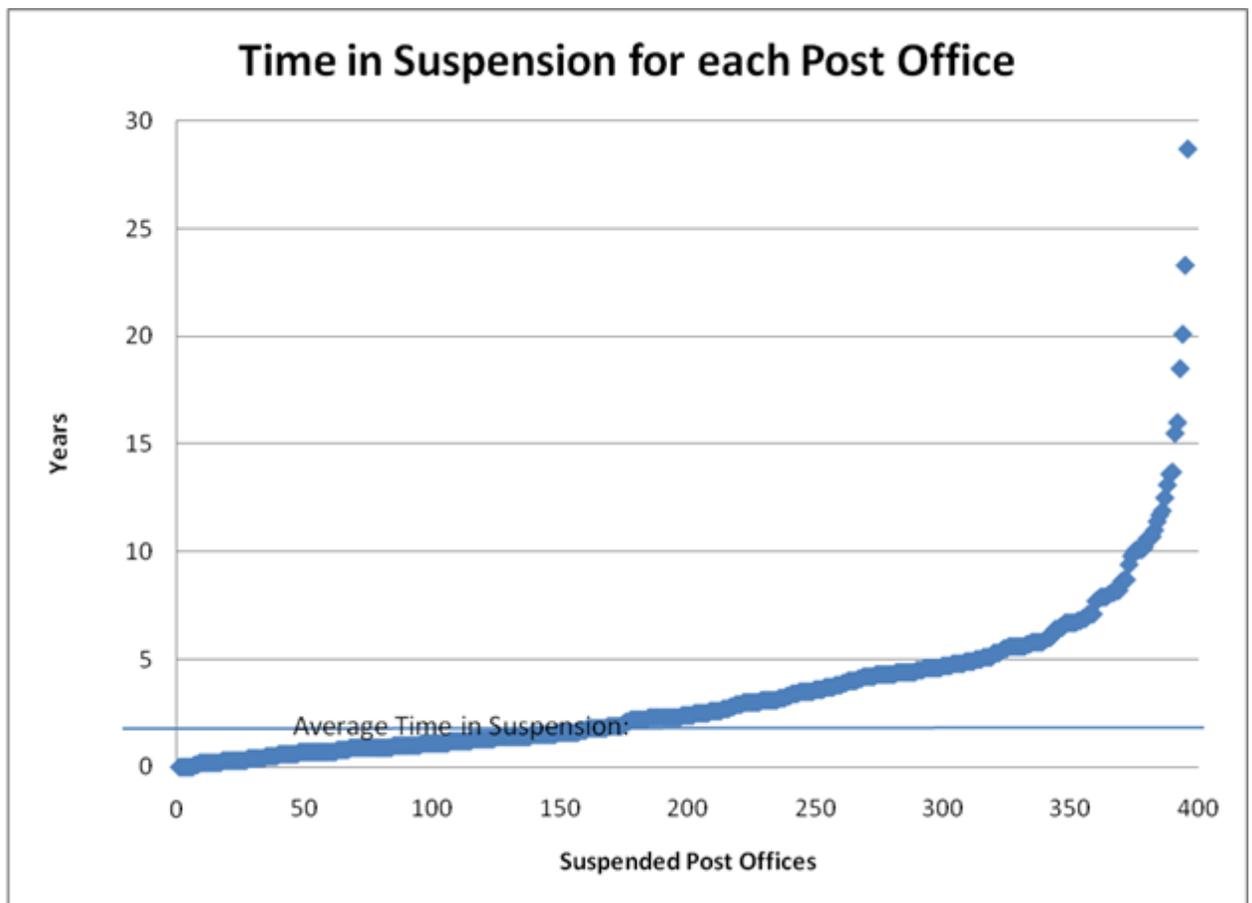
²⁴ See Notice of the Public Representatives of Filing PR-PI2010-1-NP1 (March 2, 2010). The information in Exhibit F (Non-Public) was offered to the Public Representatives on a confidential basis. While the Public Representatives do not agree that this information should be treated as confidential, they agreed to accept the information on that basis in order to avoid delays obtaining access to the information. The Public Representatives retain the right to seek public disclosure of the information contained in Exhibit F (Non-Public).

²⁵ Response of the United States Postal Service to Question 9 of Chairman’s Information Request No. 3, Docket No. ACR2009 (February 5, 2010).

²⁶ These Offices may have been suspended for reasons other than lease termination; no information is provided as to why the suspension occurred.

Suspended Post Offices			
All Offices in Suspension in the Past Five Years			
Current Status	Internal Status of Suspension	Post Offices	Average Time Suspended
	Pending Final Determination at Headquarters	27	4.43
	Decision Approved. Pending Final Posting of Decision.	27	4.21
	Pending Discontinuance Study in the Field	195	3.36
Suspended	All offices currently in Suspension	249	3.57
Closed		117	3.70
Service Restored		31	0.86
Total		397	3.40

The following graph provides a representation of the time in suspension for each suspended Post Office included in Exhibit G (including offices subsequently closed or restored).



The following conclusions can be drawn from the data submitted:

Conclusion No. 1: The number of suspended Post Offices reported in Exhibit G is significantly higher than the number reported in *Hacker Valley* or in Exhibit F (Non-Public).

The total number of Offices reported in Exhibit G as suspended during the past five years, 397, is significantly higher than the 97 reported in *Hacker Valley*. The same is true for the 249 currently shown by Exhibit G to be in suspension.

Conclusion No. 2: The periods of suspension reported in Exhibit G are significant and appear to be growing.

On average, Exhibit G shows the suspension process to be taking over three years before a final determination is made. There are 54 Post Offices where a field study concerning discontinuance has recently been completed, that process has taking roughly 4.3 years on average. Compared with the 3.7 years it has taken to formally close 117 offices in the last five years, it appears that more offices are being closed at a slower rate.

Conclusion No. 3: Exhibit G suggests that Post Offices suspended for more than ten months appear to have a relatively low probability of reopening.

Once a suspension occurs, the average time for restoration of service is roughly 10 months. Of the 31 locations where service was restored 22, or 71%, were restored within the 10 month period. The longest a location was suspended before service was restored, in the period covered by the database, was 3.5 years (the vast majority taking much less time). The average time of suspension for the offices currently suspended is over 3.5 years. If past results can predict future actions with regard to the suspension process, then the average station has almost no chance of having service restored if the suspension lasts for over a year.

It should be noted that the list includes three Post Offices which had operations suspended in the 1980s, of which the longest running suspension was initiated on May 29, 1981. The Postal Service is still planning on undertaking a field study to determine if it can close that office, in Leupp Arizona. After almost 29 years of suspension, it appears safe to assume that the likelihood that the Leupp, Arizona Post Office reopening is quite remote.

Together, the large number of suspended Post Offices, the periods of suspension which far exceed the nine months estimated by the Postal Service as the time required to complete a discontinuance study, and the unlikelihood that Post Offices suspended for these extended periods will ever reopen suggest that the suspension process has become a substitute for the discontinuance process provided for in the Discontinuance Handbook.

To date, the Public Representatives have not been provided with information that undercuts the implications of the foregoing data. The Public Representatives sought access to (1) the Notice of Post Office Emergency Suspension for each Post Office included on Exhibit F (Non-Public);²⁷ (2) the Official Record Index for each Post Office included on Exhibit F (Non-Public) for which a discontinuance study has been instituted;²⁸ and the log of Post Office Discontinuance Actions for each Post Office included on Exhibit F (Non-Public).²⁹ The information sought by the Public Representatives is similar to the information sought by the Commission in the *Hacker Valley* proceeding.³⁰ The purpose in seeking this information was to test whether the discontinuance process prescribed by the Discontinuance Handbook was actually being followed. If so, it would offset the negative implications of the data discussed above. In the absence of evidence that the prescribed process is being observed, the most likely inference from the data shown above is that the Discontinuance Handbook procedures are being ignored and that many emergency suspensions are *de facto* discontinuances.

Unfortunately, the Postal Service has failed to provide the requested information. According to the Postal Service, the requested information is maintained at the District level and copies are not, in general, physically available at the Postal Service Headquarters. Moreover, the Postal Service advised the Public Representatives that copies or access could not be provided within the timeframe for filing comments in this proceeding. Finally, the Postal Service has advised the Public Representatives that before access could be provided to any of these documents it would be necessary to

²⁷ This notice is included in the Discontinuance Handbook as USPS Exhibit 613.1 and is attached hereto as Exhibit A.1.

²⁸ The form for the Official Record Index is included in the Discontinuance Handbook as USPS Exhibit 134.62e and is attached hereto as Exhibit C.1.

²⁹ The form for the log of Post Office Discontinuance Actions is included in the Discontinuance Handbook as USPS Exhibit 422 and is attached hereto as Exhibit C.2.

³⁰ See Commission Information Request Nos. 2 and 3, Docket No. A2009-1.

confirm that the information contained on these forms is up-to-date. It is unclear what proportion of forms are not up-to-date, or how far out-of-date those forms might be. The possibility that much of the information is not up-to-date, by itself, suggests that emergency suspensions have not proceeded beyond the suspension stage and that those suspensions are *de facto* discontinuances.

The Public Representatives also requested access to a Postal Service database that they understood tracked suspensions and discontinuances of Post Offices. The purpose of seeking access to this database was to test compliance with the Discontinuance Handbook suspension/discontinuance procedures. The Public Representatives were advised by the Postal Service that that the requested data base suffered from a number of problems and that access to the database would not be provided.

It now appears that another database is available for tracking suspensions and discontinuances, namely, the Discontinuance Tracking System identified as the source of the information presented by the Postal Service in response to the Chairman's Information Request in the 2009 ACR proceeding. See Exhibit G, hereto. The Public Representatives believe that information contained in the Discontinuance Tracking System could provide significant assistance in assessing whether the emergency suspension procedure has operated in the manner prescribed by the Discontinuance Handbook.

Finally, the Public Representatives would note that they sought information regarding the number of personnel at Postal Service Headquarters who are responsible on a day-to-day basis for administering the suspension/discontinuance process. Based on their inquiries, it is the Public Representatives' understanding that supervision of the suspension/discontinuance process is provided by literally one or two individuals. In view of the large number of Post Office suspensions that have occurred over the past five years, *see supra*, it is challenging, to say the least, for any one or two individuals to keep track of the progress of so many suspensions.

V. INFORMATION FROM OTHER SOURCES

In addition to their efforts to obtain relevant information from the Postal Service, the Public Representatives actively sought information from postal customers whose Post Offices have been suspended and from organizations involved in the suspension process.³¹ Finally, the Public Representatives have reviewed the responses to outreach letters sent to various persons by the Commission's Office of Public Affairs and Governmental Relations.

Given the limitations on information provided to the Public Representatives by the Postal Service, the Public Representatives will be compelled to rely to a great extent on these comments and the information provided by postal customers and other interested persons in order to assess how the emergency suspension procedure operates in practice.

Information from these sources represent the concerns of individual citizens who have experienced the suspension process and its affects first hand. Notably, several communities have filed comments that document collective difficulties caused by the suspension of their local Post Office. The Public Representatives intend to provide a comprehensive review of these submissions in their reply comments. As discussed in the previous section, the Postal Service has declined to provide an evidentiary record for any of the suspended offices being reviewed in this docket (with the notable exception of *Hacker Valley*). Documents that detail the process of suspension (internal and public) are crucial to understanding how decisions made for an individual Post Office basis develop into a pattern for how emergency suspensions are used. However, some Postal Service documents have been provided to the Public Representatives by members of the public that help shed some light on this process.

Subject to authentication and the review of additional comments, the Public Representatives would note that serious questions are raised in a number of comments

³¹ Following the issuance of Order No. 335, the Public Representatives received a number of written comments address to their attention. The Public Representatives have forwarded those comments to the Commission's docketing section for inclusion in the Public Commenter file associated with Docket No. Pi2010-1. Following the close of the period for initial comments, the Public Representatives intend to file a motion to have these hardcopy comments added to the docket in order to ensure the opportunity for the Postal Service to respond and for the Commission to consider the points discussed in those comments.

regarding the manner in which the suspension/discontinuance process is being implemented. Allegations include claims that :

- An eviction used as a basis for a suspension did not occur (Laketon, IN 46943);
- Notice of the suspension to postal patrons was inadequate (Whitmer, WV 26296);
- Notice of community meetings was inadequate (Piercy, CA 95587);
- The alternative service provided after the suspension was inadequate (Crescent Lake, OR 97425) ; and
- An alternative building was available for a Post Office (Hacker Valley, WV 26222).

If confirmed and representative of a significant number of cases, these allegations suggest that the procedures prescribed by the Discontinuance Handbooks are not being properly implemented.

The documents made available by public commenters thus far fit into the following categories: public notices of suspension, notes from meetings with communities discussing alternate service, conversations regarding unsuccessful lease negotiations, and Postal Service Notices of Suspension (Exhibit A.1).

Analysis of these documents has helped the Public Representatives categorize the circumstances that have lead to the Postal Service exercising its authority to emergency suspend Post Offices. Broadly, there are four justifications commonly used when a lease suspension occurs. They are as follows: disaster; safety or health hazards, inability to negotiate favorable lease, and inability to find suitable alternative quarters. In the document provided by the Postal Service (Exhibit F(Non-Public)), the terminology is slightly varied, but the core ideas are the same.

There are cases where the Postal Service is forced by outside factors to suspend operation at a Post Office. When a Post Office is destroyed or damaged by a natural disaster, it is not is in operational condition, and the suspension process allows the Postal Service to provide alternate service while it develops and implements a plan to

either restore service or permanently change the operating procedures at the affected location.

Safety and health hazards are another instance of the Postal Service properly responding to a change in circumstances by exercising its authority to suspend. However, this justification is open to abuse. Offices are suspended for this reason where the situation has not changed for many years, especially with respect to ADA requirements, and the community affected often reacts very unfavorably to this justification when it is not spurred by a specific change in circumstance. The facts concerning Post Offices suspended for this justification demand attention to assure the public that the suspension is indeed justifiable. When a Post Office is suspended for this reason and no plan of action is developed or implemented for a long period of time it may appear to the public that the situation was not actually an emergency.

There are many Post Offices suspended for Damage or Safety reasons, but the majority of the emergency suspensions are due to lease termination caused by a failure to agree to a new lease or because the Postal Service cannot find an appropriate location to host a postal facility. There is a wide variety of circumstances where the Post Office cannot renew a lease, and without further official documentation there is no need to speculate why the Postal Service cannot come to terms on such a renewal. Generally, the issue of no suitable location arises in a situation unique to the Postal Service: the Postmaster is a lessor to an office in the Postmaster's residence. Such offices are often passed through generations of a given family. When a postmaster in this position decides to retire or resign, the Postal Service cannot continue to have an office in a private residence for security reasons.

VI. TENTATIVE RECOMMENDATIONS

Despite their diligent efforts, the Public Representatives do not believe that the information collected thus far provides an adequate basis for assessing whether the suspension/discontinuance process has been implemented in accordance with the Discontinuance Handbook procedures. Accordingly, the Public Representatives recommend:

A. That the Commission consider continuing its investigation of Post Office suspensions and should require the Postal Service to provide additional information of the type previously requested by the Public Representatives.

Specifically, the Public Representatives believe that, at a minimum, information is needed from the Notice of Post Office Emergency Suspension, the Official Record Index, and the log of Post Office Discontinuance Action for each Post Office listed on Exhibit F (Non-Public) and/or covered by Exhibit G. See Section IV., *supra*. In that connection, the information contained on Exhibit F (Non-Public) needs to be reconciled with the information on contained on Exhibit G. Finally, the Public Representatives should be given access to the Postal Service Discontinuance Tracking System referred to in Exhibit G.

Were the Public Representatives required to make recommendations on the basis of the information provided thus far, they would be inclined to recommend:

B. That the Commission consider recommending greater oversight of the suspension/discontinuance process by Postal Service Headquarters personnel, including more uniform implementation of the suspension/discontinuance procedures from district-to-district.

C. That the Commission consider requiring the Postal Service to report on the status of its efforts to ensure compliance with the procedures required by the Discontinuance Handbook. Such a report would relate directly to the Commission's responsibilities regarding compliance with statutory requirements of title 39, as well as oversight of the Universal Service Obligation and Service Performance.

D. That the Commission consider the possibility of reporting to Congress on the results of its investigation of the suspension process, including possible legislation that would prevent the use of suspensions as *de facto* discontinuances.

E. With respect to Post Offices that have already been subjected to suspensions, that the Commission consider requiring the Postal Service to report regularly on the status of the efforts to either lift the suspension or proceed with a discontinuance study. Failure to observe Discontinuance Handbook procedures could form the

basis for determining that a *de facto* discontinuance had occurred and that review of the decision to discontinue could be sought.

F. That the Commission consider issuing orders to show cause why Post Offices whose operations have been suspended for more than 10 months should not be considered discontinued and ripe for review.

G. That the Commission treat all future suspensions as discontinuances and therefore subject to review, unless the Postal Service demonstrates that an emergency within the definition of the Discontinuance Handbook exists and that the Postal Service is complying with the applicable procedures of the Discontinuance Handbook.

These latter recommendations are based on the impression created to date by available information that the suspension/discontinuance procedures of the Discontinuance Handbook are not, in general being, followed. The Public Representatives freely admit that this impression is based on limited information and that their views are subject to change if additional information is provided which demonstrates general compliance with the Discontinuance Handbook procedures. Nevertheless, the Public Representatives feel obligated to advise the Postal Service and other interested persons of their views at this early stage of the public inquiry so that the Postal Service and others will be provided an opportunity to comment on those recommendations in their April 1, 2010 reply comments.

In making the foregoing tentative recommendations, the Public Representatives are aware of, and sensitive to, the financial circumstances of the Postal Service. They also assume that good faith efforts have been made by many Postal Service employees to administer the Discontinuance Handbook as intended. However, one of the underlying objectives of the Discontinuance Handbook is to ensure postal patrons, in the words of 39 USC 404(b)(3), with “ready access to essential postal service” that is consistent with reasonable economies of postal operations.” On the information available thus far, it appears to the Public Representatives that the Commission needs to encourage a serious effort by the Postal Service to implement the suspension/discontinuance procedures set forth in the Discontinuance Handbook.

Respectfully submitted,

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