

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

East Elko Station  
Elko, Nevada

)  
)

Docket No. A2010-3

**ANSWERING BRIEF**  
  
**OF**  
  
**VALPAK DIRECT MARKETING SYSTEMS, INC.,  
VALPAK DEALERS' ASSOCIATION, INC., AND  
ASSOCIATION OF PRIORITY MAIL USERS, INC.**  
(April 19, 2010)

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## STATEMENT OF THE CASE

On February 22, 2010, the Commission received correspondence purporting to constitute an appeal of the closure of the East Elko Station of the Elko, Nevada Post Office. (At various places in the letter (*i.e.*, pp. 1, 2), the East Elko Station was incorrectly identified as a “Post Office,” but it is usually correctly identified as a “Station.”)

Treating that correspondence as an appeal under 39 U.S.C. section 404(d), on March 3, 2010, the Commission issued Order No. 417, “Notice and Order Accepting Appeal and Establishing Procedural Schedule.” That Order directed the Postal Service to file the administrative record or otherwise file a responsive pleading by March 9, 2010.

On March 9, 2010, the Postal Service filed a Notice both challenging the Commission’s lack of “subject matter jurisdiction under 39 U.S.C. section 404(d) to review Postal Service decisions regarding the discontinuance of stations and branches” (p. 1), and informing the Commission that it did not have a final administrative record for the closure of the East Elko Station.

Order No. 417 noted that parties in support of the petition could submit either an opening brief or a Form 61 by March 29, 2010, but no party made such a filing. April 19, 2010 was set as the deadline for filing of answering briefs in support of Postal Service.

Order No. 417 addressed the broader question of the Commission’s jurisdiction with respect to facilities which are not Post Offices as follows:

In considering this appeal, the Commission will be relying on its interpretation of 39 U.S.C. section 404(d)(1) which accords customers of **stations and branches** the same treatment as customers of **post offices** for purposes of appeal.

The Commission’s position of record on this issue has been developed since the late 1970s, when the former Rate Commission first addressed the definition of post office in Docket

No. A78-1. *In re Gresham, SC*, Order No. 208 (August 16, 1978). Since that time, the Commission has consistently put forward the position that stations and branches were “post offices” within the meaning of section 404(d).

**Comments from the mailing community and general public in this docket are encouraged.**

In addition, it would be helpful for commenters to review whether precedent based on these cases, decided by the former Rate Commission, should be controlling in the new regulatory environment established by the Postal Accountability and Enhancement Act. [Order No. 417, p. 3 (emphasis added).]

Valpak Direct Marketing Systems, Inc. and Valpak Dealers’ Association, Inc. intervened in this docket on March 29, 2010. The Association of Priority Mail Users, Inc. filed a motion for leave to intervene out of time on April 16, 2010, and filed its notice of intervention on April 19, 2010. The motion is now pending.

Valpak Direct Marketing Systems, Inc., Valpak Dealers’ Association, Inc., and, if granted leave to intervene, the Association of Priority Mail Users, Inc. (hereinafter “Valpak/APMU”), hereby file their answering brief pursuant to Rule 115(e) of the Rules of Practice and Procedure, 39 CFR section 3001.115(e), and Commission Order No. 417.

**BACKGROUND**

The legal issue presented in this docket was recently discussed in the context of a docket involving a change in service under 39 U.S.C. section 3661. In Docket No. N2009-1, the “Station and Branch Optimization and Consolidation Initiative, 2009,” the Postal Service requested the Commission to consider a proposal to close certain postal facilities, and, whether the proposal constituted a change in the nature of postal service on a substantially nationwide

basis under 39 U.S.C. section 3661. If the Commission believed that it did, the Postal Service asked the Commission to issue an advisory opinion.<sup>1</sup>

In the course of that proceeding, a question arose whether 39 U.S.C. section 404(d) — which expressly applies only to the closure of a “post office” — also applied to the closure of a station or branch. The Postal Service took the position that stations and branches were not “post offices” within the meaning of section 404(d) and therefore were not subject to an appeal before the Commission. *See* Docket No. N2009-1, USPS Reply Brief, pp. 6-12. Valpak advanced the same position. *See* Valpak Initial Brief, p. 18; Valpak Reply Brief, p. 5.

The Commission’s Advisory Opinion addressed the jurisdictional disagreement:

The Commission and the Postal Service disagree on the applicability of section 404(d)(5). The Commission’s opinion is that this section is applicable to **all retail facilities** manned by government Postal Service employees. This includes Post Offices, classified stations, and classified branches.

The Postal Service develops a legal argument including references to legislative history to support its opinion that section 404(d)(5) is applicable **only to Post Offices**, and not to classified stations or branches. Postal Service Reply Brief at 6-12. The Postal Service argues that this legal disagreement **should not be resolved based on the record of this docket. *Id.***

The Commission is not persuaded by the Postal Service’s legal argument, but agrees there is **no need to resolve the legal issue at this time**. The essential issue in this docket is whether patrons of all retail postal facilities should be able to appeal a closing or consolidation to assure that the Postal Service’s own process was properly followed. On sound public policy grounds alone, the Commission finds that the record supports treating customers of stations, branches, and Post Offices the same, at

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<sup>1</sup> In Docket No. N2009-1, Valpak took the position that the Commission did not have jurisdiction to issue an advisory opinion, as the Postal Service had not made the requisite finding that the service change met the statutory standard. *See* Valpak Initial Brief (Dec. 2, 2009), pp. 3-8.

least for the purpose of ensuring that the Postal Service follows its own policies and procedures.

Congress did not authorize the Commission to review the merits of Postal Service management decisions to close retail facilities. However, Congress did establish a **process for patrons to appeal** to the Commission to assure that the Postal Service follows established procedures. The Postal Service recognizes that **postal patrons can not distinguish** between Post Offices, classified stations, and classified branches. The closing of a Postal Service operated retail facility has **substantially the same effect** on patrons regardless of how the Postal Service might classify the facility. **Thus, the Commission concludes** that patrons of all retail Postal Service facilities should be provided with the same opportunity to assure that established procedures are adhered to, **whether or not it is required by statute**.

The Commission finds that patrons of Post Offices, classified stations, and classified branches equally should be advised that they may **appeal** whether Postal Service determinations to close or consolidate a facility were made in accordance with established procedure. The Commission already believes it is required to accept such appeals. [Docket No. N2009-1, Advisory Opinion Concerning the Process for Evaluating Closing Stations and Branches (Mar. 10, 2010), pp. 65-66 (footnote omitted) (emphasis added).]

The Commission noted that it was requesting “additional views on whether stations and branches are post offices within the meaning of section 404(d)” (*Id.*, p. 66 n.42) in a separate proceeding — the instant proceeding.

In Order No. 417 (p. 3), the Commission asked for input on the following issues:

(i) the Commission’s interpretation of 39 U.S.C. section 404(d) as controlling the closure or consolidation of postal stations and branches and

(ii) the value of prior precedent in light of the Postal Accountability and Enhancement Act.

**ARGUMENT****I. 39 U.S.C. SECTION 404(d) APPLIES ONLY TO POST OFFICES, NOT TO STATIONS AND BRANCHES.**

The text of 39 U.S.C. section 404(d) is set out in Appendix I to this filing.

Additionally, that appendix sets out the text of the law prior to the enactment of the Postal Accountability and Enhancement Act. It is undisputed that the text of 39 U.S.C. section 404(d) refers only to the closing of “post offices” — using that term consistently and repeatedly — and makes no reference whatsoever to either “stations” or “branches.”

According to Postal Service regulations, 39 U.S.C. section 404(b) [now 404(d)] only applies to the closing or consolidation of Post Offices.

Under 39 U.S. Code (USC) 404(b), any decision to close or consolidate a Post Office must be based on certain criteria. These include the effect on the community served; the effect on employees of the Post Office; compliance with government policy established by law that the USPS must provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where Post Offices are not self-sustaining; the economic savings to the USPS; and other factors that the USPS determines necessary. In addition, certain mandatory procedures apply. [DMM section 608.3.1.2.]

The distinction in types of facilities is long standing. In regulations predating the enactment of section 404(d)’s predecessor in 1976, the Postal Service defined “stations” and “branches” (in 1971) as:

(a) *Description.* (1) Stations are established within the corporate limits or boundary, and branches are established outside the corporate limits or boundary of the city, town, or village in which the main post office is located. Stations and branches may be designated by number, letter or name. As a general rule, branches are named.

(2) Stations and branches transact registry and money order business, sell postage supplies, and accept matter for mailing. Delivery service, post office boxes, and other services may be provided when directed by the postmaster.

(3) Stations and branches, except nonpersonnel rural stations and branches, are designated as independent when registered and other mail is received or dispatched without passing through the main office.

(b) Classification —(1) Classified. Operated by postal employees in quarters provided by the Federal Government.

(2) Contract. Operated under contract by persons who are not Federal Government employees. Persons operating contract stations and branches are independent contractors and neither the contractors nor any person employed by them to assist in the conduct of contract stations or branches shall be employees of the Federal Government for any purpose whatsoever. [39 C.F.R. § 241.2.]

In Docket No. N2009-1, the Postal Service provided the Commission with important history of the way in which Congress has addressed (i) post offices, (ii) stations, and (iii) branches over the past 100 years. *See* Docket No. N2009-1, Postal Service Reply Brief, p. 8 n.10. The Postal Service explained the legislative history of 39 U.S.C. section 404(d). *See Id.*, p. 6 n.5. Valpak/APMU believes that the Postal Service demonstrated that the legislative history of subsection 404(d) does not demonstrate that the statute was intended to apply beyond its terms — and can be read to apply only to post offices. As the Postal Service referenced the legislative intent, its narrow purpose was clear:

The “Randolph Amendment” accordingly provided for local participation in determinations to discontinue small rural **post offices**, or to consolidate them under the management of another **post office**. In its analysis of this section, **the conference report on H.R. 8603 explicitly limited its application to post offices**: The conference substitute adopts the Senate provision except that the right of appeal to a United States court of appeals is deleted and instead there shall be a right of appeal to the Postal Rate Commission. The managers intended that an appeal to the

Commission under this new provision may be made only by a regular patron of a **post office** which has been ordered to be closed or consolidated. Also, the managers intend that this **provision apply to post offices only and not to other postal facilities.** [*Id.* (emphasis added).]

In its Advisory Opinion in Docket No. N2009-1, at p. 66, the Commission interweaves its discussion of the issue before it in that docket (the Postal Service's duty to seek an Advisory Opinion in certain cases under 39 U.S.C. section 3661) with the issue in the instant docket (the right of a postal patron to appeal a closing or consolidation of a Post Office under 39 U.S.C. section 404(d)). At the outset, the Commission recognizes "there is no need to resolve the legal issue at this time," but then the Commission's ensuing discussion was not limited to issues relevant under section 3661, but continued to discuss the scope of appeal rights of postal patrons under section 404(d). *Id.*

In supporting its interpretation of section 404(d), the Commission treats the statutory interpretation of a jurisdictional statute as a mere policy matter. It does not examine the text of section 404(d), its legislative history, the use by Congress of the same terminology in other contexts, etc. Rather than seeking the authorial intent of Congress, the Commission grounds its meaning of the text on two extrinsic factors. First, the Commission asserts that members of the public do not know the technical meaning of the statutory term "post offices" — as they cannot distinguish post offices from stations and branches — in section 404(d). Second, the Commission asserts that the "closing of a Postal Service operated retail facility has substantially the same effect on patrons regardless of how the Postal Service might classify the

facility.”<sup>2</sup> *Id.* Based on these two factors, the Commission exercises legislative powers that it does not have:

Thus, the Commission concludes that patrons of all retail Postal Service facilities should be provided with the same opportunity to assure that established procedures are adhered to, **whether or not it is required by statute.** [*Id.*]

It is submitted that neither of the two factors found persuasive by the Commission are determinative of the meaning of section 404(d).

It is not the Commission’s task to determine its own jurisdiction based upon its own public policy views. Rather [i]t is axiomatic that an administrative agency’s power ... is limited to the authority delegated by Congress,” according to the policies set by that legislative body. *See Bowen v. Georgetown Univ. Hospital*, 488 U.S. 204, 208 (1988). It is not within the authority of the Commission to assume jurisdiction over appeals from Postal Service managerial actions “whether or not it is required by statute.”

The proper manner in which to analyze the meaning of section 404(d) is well established. “The first step in interpreting a statute is to determine whether the language at issue” — post offices — “has a plain and unambiguous meaning with regard to the particular dispute in the case.” *See Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997). [I]f the statutory language is unambiguous and ‘the statutory scheme is coherent and consistent,’ then that meaning prevails. *Id.* “The plainness or ambiguity of statutory language is determined by

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<sup>2</sup> The Commission excludes from its definition of “post offices” contract stations or branches, even though the closing or consolidation of these facilities could meet the Commission’s test of “substantially the same effect” on patrons. *Id.*, p. 61 n.40.

reference to the language itself, the specific context in which the language is used, and the broader context of the statute as a whole.” *Id.*

It is submitted that the language of section 404(d) is unambiguous. The Postal Accountability and Enhancement Act (“PAEA”) does not contain any definition of “post office.” However, the statutory scheme to limit appeals to post offices is a coherent and consistent national policy choice. Moreover, elsewhere, PAEA demonstrates a clearly understood distinction between a “branch” and a “post office.” PAEA section 1009(b) (“Not later than 60 days after the date of the enactment of this Act, the United States Postal Service shall provide the same window service hours for the Fairport Harbor **Branch** of the United States **Post Office** in Painesville, Ohio, as were in effect as of December 1, 2005.” (emphasis added)).

The Commission’s effort to read “post office,” as if that term includes **any** “Postal Service retail facility” is belied by the fact that, on January 22, 2009, H.R. 658 was introduced in the United States House of Representatives that, if enacted into law, would substitute “postal facility” for “post office” in section 404(d) of PAEA. *See* H.R. 658, “Access to Postal Services Act,” <http://thomas.loc.gov/cgi-bin/queryz?c111:H.R.658>. Additionally, the bill, if enacted, would insert a specific definition of “postal facility” to include any “office, branch, station, or other facility which -- ... is operated by the Postal Service.” *Id.*, p. 2. Supported by more than 100 co-sponsors, H.R. 658 is specifically aimed at “modify[ing] the procedures governing the closure or consolidation of postal facilities,” including the precision of an appeal to the Postal Regulatory Commission. *See id.* While the introduction of such a bill would not

be considered determinative of the Commission's review authority,<sup>3</sup> H.R. 658 serves as a sober reminder that the Commission ought not presume to act without regard to the existing statutory language limiting its review authority to the closing of a "post office," not of a "branch" or "station."

## II. THERE IS GREAT IMPORTANCE IN PROTECTING POSTAL SERVICE MANAGERIAL DISCRETION.

PAEA vests in the Postal Service broad managerial discretion over the Postal Service. Valpak's Initial Comments on the Postal Service's FY 2009 Annual Compliance Report (Docket No. ACR2009) discussed various matters that are within the Postal Service's managerial discretion. That discussion is relevant here. These matters include adjusting its retail and processing network to be more efficient. *See* Docket No. ACR2009, Valpak Initial Comments, pp. 29-36; *see also* Valpak Reply Comments, p. 7 ("Congress vested managerial authority in a Board of Governors (39 U.S.C. § 202), and vested managerial powers in the Postal Service (39 U.S.C. § 404) and it must be allowed to exercise that "**managerial discretion**" to operate the Postal Service "in a business-like manner" without unnecessary constraint. The Postal Service needs the authority to cut costs and cannot afford to operate with unfunded mandates." (emphasis original)).

Congress gives the Postal Service the power "to determine the need for post offices, postal and training facilities and equipment, and to provide such offices, facilities, and equipment as it determines are needed" in 39 U.S.C. section 404(a)(3). While the inherent power to discontinue "post offices" is limited by section 404(d), that limitation does not apply

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<sup>3</sup> *See Order of Railway Conductors of America v. Swan*, 329 U.S. 520, 529 (1947).

to any other type of facility — such as “postal and training facilities.” Long before enactment of section 404(d), the Supreme Court determined that the power to discontinue postal facilities is inherent in the Postmaster General’s power to establish facilities. *See Ware v. United States*, 71 U.S. 617 at 632-33 (1867):

[T]he power to discontinue post-offices is incident to the power to establish them, unless there is some provision in the acts of Congress restraining its exercise.

Undoubtedly Congress might discontinue a post-office which they had previously established by law, and it is difficult, to see why the Postmaster-General may not do the same thing.... Strong necessity exists that the power of the Postmaster-General in this behalf should be upheld so long as the offices are established by his authority. New facilities for transportation may call for change of location, or it may appear that the location was unadvisedly selected.... [Footnote omitted.]

Among the factors “encourag[ing] the movement for postal reform” leading to the enactment of PAEA “were the financial challenges of the USPS,” caused primarily by soaring labor costs and declining revenues from first-class mail. K. Kosar, “The Postal Accountability and Enhancement Act: Overview and Issues for Congress,” p. 1. (CRS Report for Congress: Dec. 14, 2009). In an effort to offset increasing costs, the “USPS has sought ways to increase its postal product and services revenues.” *Id.*, p. 11. In the current economic difficulties, however, the Postal Service is focused on cutting costs so that it can survive into the future. The Commission’s role should include protection of the Postal Service’s managerial prerogatives, including its decisions to close postal branches and stations. Any derogation of those prerogatives should be narrowly construed.

**CONCLUSION**

Congress made a limited grant of jurisdiction to the Commission in 39 U.S.C. section 404(d) to review the closing and consolidation of post offices only. It is not within the power of the Commission to expand the scope of its own jurisdiction. As 39 U.S.C. section 404(d) does not apply to the closure or consolidation of stations and branches, the Commission should dismiss this appeal of the closing of a station for lack of subject matter jurisdiction.

Respectfully submitted,

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**Appendix I**  
**Statutory Changes in 39 U.S.C. section 404(d)**

**1. Current Law — 39 U.S.C. section 404(d)**

**Postal Accountability and Enhancement Act, Pub. L. 109-435 (Dec. 20, 2006).**

**SEC. 1006. DATE OF POSTMARK TO BE TREATED AS DATE OF APPEAL IN CONNECTION WITH THE CLOSING OR CONSOLIDATION OF POST OFFICES.**

(a) IN GENERAL.—Section 404(b) of title 39, United States Code, is amended by adding at the end the following:

“(6) For purposes of paragraph (5), any appeal received by the Commission shall—

“(A) if sent to the Commission through the mails, be considered to have been received on the date of the Postal Service postmark on the envelope or other cover in which such appeal is mailed; or

“(B) if otherwise lawfully delivered to the Commission, be considered to have been received on the date determined based on any appropriate documentation or other indicia (as determined under regulations of the Commission).”.

(b) EFFECTIVE DATE.—This section and the amendments made by this section shall apply with respect to any determination to close or consolidate a **post office** which is first made available, in accordance with paragraph (3) of section 404(b) of title 39, United States Code, after the end of the 3-month period beginning on the date of the enactment of this Act.

SEC. 1010(e):

**AUTHORITY TO FIX RATES AND CLASSES GENERALLY; REQUIREMENT RELATING TO LETTERS SEALED AGAINST INSPECTION.**—Section 404 of title 39, United States Code (as amended by section 102) is further amended by redesignating subsections (b) and (c) as subsections (d) and (e)....

**Subsection 404(d).**

(d)(1) The Postal Service, prior to making a determination under subsection (a)(3) of this section as to the necessity for the closing or consolidation of any **post office**, shall provide adequate notice of its intention to close or consolidate such **post office** at least 60 days prior to the proposed date of such closing or consolidation to persons served by such **post office** to ensure that such persons will have an opportunity to present their views.

(2) The Postal Service, in making a determination whether or not to close or consolidate a **post office**--

(A) shall consider--

(i) the effect of such closing or consolidation on the community served by such **post office**;

(ii) the effect of such closing or consolidation on employees of the Postal Service employed at such office;

(iii) whether such closing or consolidation is consistent with the policy of the Government, as stated in section 101(b) of this title, that the 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;

(iv) the economic savings to the Postal Service resulting from such closing or consolidation; and

(v) such other factors as the Postal Service determines are necessary; and

(B) may not consider compliance with any provision of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.).

(3) Any determination of the Postal Service to close or consolidate a **post office** shall be in writing and shall include the findings of the Postal Service with respect to the considerations required to be made under paragraph (2) of this subsection. Such determination and findings shall be made available to persons served by such **post office**.

(4) The Postal Service shall take no action to close or consolidate a **post office** until 60 days after its written determination is made available to persons served by such post office.

(5) A determination of the Postal Service to close or consolidate any **post office** may be appealed by any person served by such office to the Postal Regulatory Commission within 30 days after such determination is made available to such person under paragraph (3). The Commission shall review such determination on the basis of the record before the Postal Service in the making of such determination. The Commission shall make a determination based upon such review no later than 120 days after receiving any appeal under this paragraph. The Commission shall set aside any determination, findings, and conclusions found 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 on the record.

The 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. The provisions of section 556, section 557, and chapter 7 of title 5 shall not apply to any review carried out by the Commission under this paragraph.

(6) For purposes of paragraph (5), any appeal received by the Commission shall--

(A) if sent to the Commission through the mails, be considered to have been received on the date of the Postal Service postmark on the envelope or other cover in which such appeal is mailed; or

(B) if otherwise lawfully delivered to the Commission, be considered to have been received on the date determined based on any appropriate documentation or other indicia (as determined under regulations of the Commission).

## 2. Prior Law (prior to Postal Accountability and Enhancement Act)

**39 U.S.C. section 404(b)** — Enacted by Pub.L. 94-421 (Sept. 24, 1976) and Pub.L. 105-241 (Sept. 29, 1998) (*see* footnote below).

(b)(1) The Postal Service, prior to making a determination under subsection (a)(3) of this section as to the necessity for the closing or consolidation of any **post office**, shall provide adequate notice of its intention to close or consolidate such **post office** at least 60 days prior to the proposed date of such closing or consolidation to persons served by such **post office** to ensure that such persons will have an opportunity to present their views.

(2) The Postal Service, in making a determination whether or not to close or consolidate a **post office**--

(A) shall consider--

(i) the effect of such closing or consolidation on the community served by such **post office**;

(ii) the effect of such closing or consolidation on employees of the Postal Service employed at such office;

(iii) whether such closing or consolidation is consistent with the policy of the Government, as stated in section 101(b) of this title, that the 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;

(iv) the economic savings to the Postal Service resulting from such closing or consolidation; and

(v) such other factors as the Postal Service determines are necessary; and

(B) may not consider compliance with any provision of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.).<sup>4</sup>

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<sup>4</sup> Prior to 1998, subsection (2) read as follows:

(2) The Postal Service, in making a determination whether or not to close or consolidate a **post office**, shall consider--

(A) the effect of such closing or consolidation on the community served by **such post office**;

(B) the effect of such closing or consolidation on employees of the Postal Service employed at such office;

(C) whether such closing or consolidation is consistent with the policy of the Government, as stated in section 101(b) of this title, that the Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and

(3) Any determination of the Postal Service to close or consolidate a **post office** shall be in writing and shall include the findings of the Postal Service with respect to the considerations required to be made under paragraph (2) of this subsection. Such determination and findings shall be made available to persons served by such **post office**.

(4) The Postal Service shall take no action to close or consolidate a **post office** until 60 days after its written determination is made available to persons served by such **post office**.

(5) A determination of the Postal Service to close or consolidate any **post office** may be appealed by any person served by such office to the Postal Rate Commission within 30 days after such determination is made available to such person under paragraph (3). The Commission shall review such determination on the basis of the record before the Postal Service in the making of such determination. The Commission shall make a determination based upon such review no later than 120 days after receiving any appeal under this paragraph. The Commission shall set aside any determination, findings, and conclusions found 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 on the record.

The 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. The provisions of section 556, section 557, and chapter 7 of title 5 shall not apply to any review carried out by the Commission under this paragraph.

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small towns where **post offices** are not self-sustaining;

(D) the economic savings to the Postal Service resulting from such closing or consolidation; and

(E) such other factors as the Postal Service determines are necessary.