

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

Notice of Filing of Letter and Opinion Letter  
By the National League of Postmasters and the National Association of Postmasters  
of the United States.

April 28, 2011

The National League of Postmasters and the National Association of Postmasters of the United States hereby give notice of a letter sent to the Commission earlier today concerning the Postal Service's proposed changes to Part 241. The letter, which includes a legal opinion letter, is attached.

Respectfully submitted,

/s/ Robert J. Brinkmann

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April 28, 2011

The Honorable Ruth Goldway  
Chairman  
Postal Regulatory Commission  
901 New York Avenue, Suite 200  
Washington, D.C. 20268-0001

Dear Chairman Goldway:

This purpose of this letter is to convey to the Commission the views of the National League of Postmasters and the National Association of Postmasters of the United States on the proposed Postal Services regulations seeking to amend Part 241 of Title 39 of the CFR, released by the Postal Service on March 31, 2011 at 76 Fed Reg. 17794. That Part contains the Postal Service's regulations on Post Office organization and administration, including the establishment, classification, and discontinuance of post offices.

First, we believe that the proposed Postal Service regulations are fundamentally inconsistent not only with the spirit, but also with the actual language of the underlying statute. We base our view on the attached opinion letter from Harold Hughes, of the law firm of Ford & Huff. Mr. Hughes is a former General Counsel of the Postal Service, and served by direct appointment to six Postmasters Generals. His opinion letter concludes that "the Proposed Rules are in significant conflict with applicable law."

Second, in addition to the illegality of the proposed regulations, we believe that the proposal fundamentally contradicts Congress' concern with the impact that the closing or consolidating of post offices has on the affected communities, particularly in small towns and rural areas. Importantly, Congress was not only concerned about how Post Office closures reduce postal services, but Congress also expressed deep concern about the non-postal consequences of closures and consolidations. In fact, the Commission recognized the possibility of such adverse results, when it recently retained the Urban Institute to evaluate how closures influence community dynamics and the economic sustainability of the affected locality.

The Congressional intent of those statutes was not to give notice of a decision that had been made by the Postal Service, but to give notice that the Postal Service was thinking of making a decision, so that the local citizenry would be informed and thus could intelligently discuss with the Postal Service how their communities would be affected. This would allow the Postal Service to make an informed decision, based on

data obtained from the community. The Postal Service was to act in the public interest – not its sole interest – in these matters, taking into account all the interests of the community. *In the matter of Bill, Wyoming*, PRC Docket No. A 79-22 (October 18, 1979) at 9.

Senatorial concern with the nonpostal effects of closings and consolidations was broad and bipartisan. This anxiety was expressed during the 1976 floor debate about whether the now-statutory post office closing provisions should be added to the bill that was before the Senate. These provisions were adopted and the bill passed the Senate, ultimately becoming the 1976 amendments to the Postal Reorganization Act of 1970.

The 1976 floor debate in support of the Randolph amendments was definitive, bipartisan, and broad. For instance, Senator Randolph (D-WV), the architect of the post office closing provisions said:

. . . I look on those offices . . . as representative of the Federal Government from the standpoint of actual day-by-day service, not just for the patrons of the offices, but also for the people of those communities who are helped by the postmaster.

These postmasters--men and women--are, in a sense, counselors to so many people. They help, in many ways with the filling out of forms and reports, and they represent what I believe is the human side of the Government . . . They strive daily to help citizens generally across a broad front.

122 Cong. Rec. 27092 (August 23, 1976). Likewise, Senator Ted Stevens (R-AK), who helped craft the 1970 Postal Reorganization Act, said:

We are aware that the U.S. Postal Service and its local post offices perform many functions which in reality have nothing to do with delivering the mail. No other Federal agency touches the lives of every American every day like the U.S. Postal Service does. For millions of Americans, the U.S. Postal Service is the only Federal agency with which they come in contact. The USPS to them is a government symbol and an important part of the Federal Government. In rural America there are hundreds and thousands, indeed GAO maintains there are 12,000, of post offices which in fact do not need to exist in order for the U.S. Postal Service to carry out its function of delivering the mail. On the other hand, they are needed for economic, social, and cultural benefits of rural America . . . Post offices provide a public service which I do not feel should be eliminated. These examples point up the need to maintain post offices even when mail can be delivered through another method.

Id. at 27128.

Senator Ernest Hollings (D-SC) strongly supported Senator Randolph:

I say to the Senator from Alaska that you only have to see a State of that kind to appreciate what the Senator from West Virginia [Sen. Randolph] is trying to get to. They are all out there, little fishing villages hither and yon, and the central gathering point is our little post office. That jells them together into a community. I think that is valuable to America . . . .

Id. at 27107. Senator Robert Packwood (R-OR) echoed that sentiment:

I believe that small post offices serve a necessary social function. They are a hub of small communities, and are often the only Federal agency in town to give needed information on taxes, social security, civil service, and other public service materials. These rural post offices are necessary services.

122 Cong. Rec. 27427 (August 24, 1976). Senator Gale McGee (D-WY) Chairman of the Senate Post Office and Civil Service Committee and an author of the Postal Reorganization Act of 1970, confirmed his view of “the importance of rural post offices everywhere in America, as a symbol much larger than just postal services.” 122 Cong Rec. at 27092 (August 23, 1976)

In essence, Congress determined that the post office closing laws protect a public interest much broader than the provision of postal services. The Commission has recognized this protection in its case law, most clearly articulated and incorporated into its jurisprudence in the seminal *Lone Grove* case:

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There is nothing inherent in the broad term “effect” which would limit its application to consequences directly connected with a change in postal Service patterns. . . . If Congress had intended to limit the consideration of community effects to those caused by changes in mail service patterns, it could have omitted § 404(b)(2)(A) altogether and rested on the provision just quoted. . . . We think that the structure of § 404(b) as a whole thus supports the view that § 404(b)(2)(A) was intended to encompass effects on the community other than those causally linked with the change in postal service patterns. . . . In view of this legislative history, it seems to us incontestable that the Service was intended to consider community effects not connected with the rendering of postal Services.

*In the Matter of Lone Grove*, Docket A79-1, May 7, 1979 at 10, 13, 16. See also *In the Matter of Woolsey, Georgia*:

In *Lone Grove* . . . the Commission concluded that the Postal Service is required, as a matter of law, to make an independent inquiry into nonpostal effects of closings or consolidations and its determination to effect such a closing or consolidation must demonstrate that such an inquiry was made. We specifically pointed to several examples involving business, economic and social effects which we believed were necessary areas for Postal Service inquiry.”)

*In the Matter of Woolsey, Georgia*, Docket A82-1, May 14, 1982 at 7.

Finally, the point Senator Stevens made back in 1976 about the importance of post offices and postmasters being the visible face of the government and of government services, is still with us today, as the testimony of both NAPUS and the League have shown over the last several years. There is a video in the Commission’s files that was submitted during the Commission’s USO proceeding that visually documents a current example of this very phenomena in Horatio, South Carolina. The video is entitled Post Roads, and it may also be found at:

<https://www.postmasters.org/legislation/rural%20post%20offices.wmv> .

Some may argue that the provision of other broad services to small rural communities has no place in a modern Postal Service. That, however, is not what the

legislative history of the post office discontinuance statute demonstrates. Congress fully understood that, unlike urban areas, governmental assistance in rural areas is only available through the local Postal Service and its postmasters. Consequently, it is up to Congress, and not the Postal Service, to decide that the Postal Service should abandon these critical roles. While the Postal Service may feel that spending 7/10s of one percent of its budget to serve small towns and rural America is too great a price to pay, that is not its call to make. Unless and until those provisions are removed, and this country's postal policy changed, the Postal Service must comply with the existing law.

Should you have any questions or need any further information, please contact either or both of us. Thank you for considering our views.

Sincerely,



Robert Rapoza  
President  
National Association of Postmasters of the  
United States



Mark Strong  
President  
National League of Postmasters

Enclosure

cc: Vice Chairman Acton  
Commissioner Blair  
Commissioner Langley  
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April 26, 2011

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**Re: Postal Service Proposed Rule: "Post Office Organization and Administration: Establishment, Classification and Discontinuance," 39 CFR Part 241**

Dear Mr. Rapoza and Mr. Strong:

You have requested a legal opinion as to whether the United States Postal Service's Proposed Rules "to improve the administration of the Post Office closing and consolidation process," appearing at 79 Fed. Reg. 17794-801 (March 31, 2011), are consistent with the statutes governing the same subjects. In my opinion, based on my familiarity with the applicable law, and on court decisions and the legislative history, the Postal Service's Proposed Rules are in significant conflict with applicable law.

I have professional experience with the applicable statutory framework, having previously served as the General Counsel of the United States Postal Service, and as an officer of its Law Department serving by direct appointment to six Postmasters General. I began my postal experience as a temporary mailhandler in the former Post Office Department. Following my graduation from Stanford University and the Stanford Law School, I worked as a law clerk in the Legislative Division of the Postal Service immediately following creation of the Service in 1971. I later served as Associate General Counsel over Rate and Classification Law, Deputy General Counsel, and as an Acting Sectional Center Manager, managing the San Jose, California, Sectional Center.

The Postal Service's stated desire to "improve" and to "harmonize" its procedures for discontinuing (*i.e.*, closing) post offices and other facilities, and to promote "transparency" for customers is certainly understandable. The proposed rule, however, effectively removes one of the two grounds available to communities to seek review of such actions at the Postal Regulatory Commission; similarly, it removes an essential element from the core definition of "post office;" and it counters the Congressional intent in creating an appeal process and in mandating service "to all communities" and a "maximum degree" of service "to rural areas, communities, and small towns where post offices are not self sustaining." 39 U.S.C. § 101(a), (b).

## **I. "CONSOLIDATION" ERASED**

Recognizing the importance of postal services to local communities, Congress provided two distinct circumstances—closing or consolidating post offices—where communities could present their first-hand knowledge of the impact of those decisions upon their local "commercial, cultural, and social life,"<sup>1</sup> and if necessary, appeal the Postal Service's decision to the Postal Regulatory Commission. Despite the Postal Service's claim that "consolidation" is ill-defined, Congress, courts and even the Postal Service have provided consistent definitions of this term. By implementing the Proposed Rule, the Postal Service would erase community involvement in consolidation decisions, with potentially far-reaching consequences; the Proposed Rule would also erase statutory and procedural protections Congress intended to provide to the public.

### **A. CONGRESS ADDS "CONSOLIDATION" TO THE STATUTES**

In 1976 Congress added a subsection to 39 U.S.C. § 404 creating a procedure for notice, community input, and a right of appeal to the Postal Regulatory Commission whenever the Postal Service determined "to close or consolidate a post office." That procedure, originally codified as Section 404(b), subsequently became Section 404(d). That single subsection refers to "closing or consolidation" of any post office eleven times.

Congress, the courts, and the Postal Service have all evinced a clear understanding of the meaning and distinction between the "closing" and the "consolidation" of a post office. In Knapp v. United States Postal Service, 449 F. Supp. 158 (E.D. Mich., 1978), the Court pointed to the legislative history in defining "consolidation:"

"Senator Randolph, when he proposed the legislation destined to become 39 U.S.C. § 404(b) [now (d)] on the floor of the Senate, made it clear that his interest was to deal with the problem of the physical closure of a post office or the physical consolidation of post offices, particularly as this relates to postal services in rural

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<sup>1</sup> H.R. Rep. No. 94-391, 94th Cong., 1st Sess. 3 (1975).

areas.... The Senator specifically objected to the ‘indiscriminate closing of our rural and small town post offices’ as well as the decision by the Postal Service to ‘create branches out of many post offices close to large cities’ and thus ‘transfer a community oriented post office into one administered through the instructions and directives of large city postmasters with little or no community involvement.’ Hearings [on S. 2844 Before the Senate Comm. on Post Office and Civil Service, Part 4, 94<sup>th</sup> Cong., 2d Sess. 142-143 (1976)], *supra*, at 142.”

Knapp at 161-162. Clearly Congress meant to distinguish a post office closing from the consolidation of a community-oriented post office into another office.

#### **B. THE COURTS DEFINE “CONSOLIDATION”**

Based on the intentions of Congress, as illuminated in the legislative history, the Knapp Court explained the distinction between a “closing” and a “consolidation,” either of which creates a right of appeal to the Postal Regulatory Commission: “‘Consolidation’, while more difficult to describe certainly has the characteristic of subordinating the day to day overall management of one office having a postmaster to the administrative personnel of another office.” Knapp at 162.

This definition has been followed by other courts. In Citizens for the Hopkins Post Office v. United States Postal Service, 830 F. Supp. 296 (Dist. SC, 1993), the Court, relying on Knapp and on the Postal Service’s own definition of “consolidation” stated: “This court finds the definition of ‘consolidation’ advanced by the Postal Service to be the one which is reasonable and in keeping with the intent of Congress in this statute. It clearly defines ‘consolidation’ as an action in which a post office would lose its independence and individual identity. It is the opinion of this court that such an action, as defined by the Postal Service, is clearly the type of action Congress intended to trigger the operation of § 404(b) [now (d)].” Hopkins, at 299.

#### **C. THE POSTAL SERVICE DEFINES “CONSOLIDATION”**

The Postal Service itself clearly understands the meaning and import “of the word ‘consolidate’ in section 404(d).” Just the month before it published its Proposed Rules, it explained to a federal district court: “A Post Office is an organizational unit headed by a postmaster that provides retail and delivery services, and mail processing to residents and businesses in the ZIP Code areas that comprise the office's exclusive service area. Use of the word 'consolidate' in section 404(d) illustrates this nuance, because it involves consolidation of what was once an independent Post Office into a subordinate station or branch reporting to another Post Office.” *Defendant Postal Service's Response in Opposition to Plaintiffs' Second*

*Amended Motion and Application for Temporary Restraining Order and Preliminary Injunction and Memorandum in Support of Defendant's Motion to Dismiss, or in the Alternative, for Summary Judgment, in City of Tuscaloosa, Alabama v. United States Postal Service, Case No. 7:11-CV-0585-SLB (served February 25, 2011), at 16 ("Postal Service Memorandum").* The Postal Service also notes that "[p]ostal regulations reflect the statutory distinction between an independent Post Office and its subordinate stations and branches, which Congress has followed for well over a century," and then cites twelve statutes and ten Acts of Congress recognizing this statutory distinction. Postal Service Memorandum at 18.

#### **D. THE POSTAL SERVICE PROPOSES TO "ERASE" "CONSOLIDATION"**

Nevertheless, just 34 days later, in its March 31, 2011, Federal Register notice, the Postal Service states: "The governing statute does not define 'close' and 'consolidate' nor does it offer any guidance as to the distinction between two terms." 79 Fed. Reg. at 17795. Accordingly, "the proposed rule would erase the effect of administrative designations on applicable discontinuance procedures." *Id.*

Even though the Postal Service expressly recognizes that section 404(d) allows a "determination to...consolidate any Post Office" to be appealed to the Postal Regulatory Commission, and that "the Postal Service does not have the power to alter the scope of the Commission's statutory jurisdiction," it nonetheless declares: "The conversion of an independent Post Office to a subordinate Postal Service-operated retail facility would no longer constitute a 'consolidation' that triggers discontinuance proceedings, as it does today." 76 Fed. Reg. at 17794, 17796, and 17795.

The resulting proposed regulatory change provides: "The conversion of a post office into, or the replacement of a post office with, another type of USPS-operated retail facility is not a discontinuance action subject to this section." Proposed 39 C.F.R. § 241.3(a)(1)(iii), 76 Fed. Reg. 17797. The Supplementary Information provided by the Postal Service emphasizes that this provision is intended to "clarify that the reclassification of a Post Office as a Postal Service-operated station or branch, or the replacement of the former with the latter, is not a closing or consolidation subject to 39 C.F.R. 241.3." 76 Fed. Reg. 17795.

#### **E. THE EFFECTS OF DELETING "CONSOLIDATION"**

This leads to several deleterious consequences which conflict with the clear Congressional intent in enacting 39 U.S.C. § 404(d).

First, under the Proposed Rules, since the "consolidation" of a Post Office into a station, or branch, or other type of "USPS-operated retail facility," "would no longer constitute a

‘consolidation’ that triggers discontinuance proceedings,” no notice of appeal rights would be provided to the public. 76 Fed. Reg. at 17795 and 96.

Next, of course, the public would have no right, under the Proposed Rules, to submit comments. Nor would the Postal Service consider itself obliged to consider “the effect on employees of the USPS-operated retail facility; [or] compliance with government policy established by law that the Postal Service 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....” Proposed 39 C.F.R. § 241.3(a)(2), 76 Fed. Reg. at 17797.

The Postal Service has already determined that its customers and the public have no right to “a judicial remedy whenever the Postal Service [makes] a business decision to relocate postal operations.” Postal Service Memorandum at 27.<sup>2</sup> See also, *Id.* at 27-28.<sup>3</sup> Now, under its Proposed Rule, it appears the Postal Service is creating a process to avoid the statutory right of appeal to the Postal Regulatory Commission which Congress created, by simply “converting” a post office into “another type of USPS-operated retail facility.” Proposed 39 C.F.R. § 241.3(a)(1)(iii), 76 Fed. Reg. 17797. Since this “is not a discontinuance,” and “would no longer constitute a ‘consolidation’,” the public would presumably have no right to appeal what the Postal Service no longer deems to be an event of regulatory, statutory, or community significance.

This “death by definition” just does not seem to be consistent with Congress’ express intent in establishing a right of review for the consolidation of post offices.

## **II. "POSTMASTER" ELIMINATED**

Having attempted the regulatory removal of “consolidation” as a basis for a statutory right of appeal to the Postal Regulatory Commission, the Postal Service’s Proposed Rule next turns to remove “postmaster” as a defining characteristic of a “post office.”

### **A. THE POSTAL SERVICE PROPOSES THAT “POST OFFICES” DON’T NEED “POSTMASTERS”**

In the Supplementary Information for its Proposed Rule, the Postal Service states the longstanding definition of a “post office:” “A Post Office is an organizational unit headed by a

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<sup>2</sup> The Postal Service has also determined that the closing of stations or branches are not subject to appeals to the Postal Regulatory Commission under 39 U.S.C. section 404(d), although “the interpretation of section 404(d) remains a matter of open contention before the Commission. E.g., PRC Order No. 673 at 2, 4-6.” Postal Service Memorandum at 18.

<sup>3</sup> “Congress further demonstrated its intent that the Postal Service be able to operate without judicial interference by exempting the Postal Service from the Administrative Procedure Act. 39 U.S.C. § 410(a).” Postal Service Memorandum at 27.

postmaster that provides retail and delivery services, and mail processing to residents and businesses in the ZIP Code areas that comprise the office's exclusive delivery service area.” 76 Fed. Reg. 17794. The Service provided the same definition to the federal court in its Tuscaloosa litigation. Postal Service Memorandum at 15.

But then, as with “consolidation,” the Postal Service determines that its new Proposed Rule will “clarify” that a “post office” does not need a postmaster: “Subsection 241.1(a) would also clarify Post Offices may be managed by postmasters as is commonly the case, or by other designated personnel. The designation of a retail facility as a Post Office, classified station, or classified branch would not depend on whether any responsible personnel is a postmaster.” 76 Fed. Reg. 17794. True to its declared intention, the Proposed Rule provides: “A change in the management of a post office such that it is staffed only part-time by a postmaster, or not staffed at all by a postmaster, but rather by another type of USPS employee, is not a discontinuance action subject to this section.” Proposed 39 CFR § 241.3(a)(1)(iii); 76 Fed. Reg. 17797.

Again, as with the erasure of “consolidation,” the removal of a postmaster from a post office is said to be “not a discontinuance action.” Therefore, no notice of appeal rights would need to be provided to the public, and the Postal Service would not need to be bothered considering public policy, or the effect on employees.

This result is not consistent with applicable law, court decisions, or Congressional intent.

## **B. CONGRESS CONSIDERS “POSTMASTERS” VITAL TO POST OFFICES**

Congress plainly considers, and enacted into law, provisions making clear that a “postmaster” is a defining characteristic of a “post office.” In the Postmasters Equity Act of 2003, Congress added a section to the law stating: “postmaster means an individual who is the manager in charge of the operations of a post office, with or without the assistance of subordinate managers or supervisors....” 39 USC § 1004(h)(3).

At the time present 39 USC § 404(d) was added, the amendment was introduced by Senator Randolph with a recognition of the vital importance of postmasters: “These postmasters—men and women—are, in a sense, counselors to so many people. They help, in many ways with the filling out of forms and reports, and they represent what I believe is the human side of the Government.... They strive daily to help citizens generally across a broad front.” 122 Cong. Rec. S14268 (August 23, 1976).

### **C. COURTS FIND “POSTMASTERS” TO BE A DEFINING FEATURE OF “POST OFFICES”**

In implementing present section 404(d) the federal courts have considered the presence or absence of a postmaster as the defining factor in determining whether a “closing” or a “consolidation” has taken place:<sup>4</sup> “Thus, plaintiffs contend that the existence of a postmaster distinguishes a post office from a postal station or branch. Part 244.131 of the United States Post Office Manual seemingly supports this position....” Wilson v. United States Postal Service, 441 F Supp 803, 806 (C.D. CA, 1977). The Wilson Court concluded: “The Court is impressed and indeed finds a substantial degree of merit with plaintiffs’ argument. It appears beyond dispute that Inglewood is lacking a full-time postmaster. Arguably, therefore, Inglewood has been reduced to the status of a postal station or branch. Although plaintiffs request more relief than this violation would afford, I am disposed to order the Inglewood Postmaster to return to his full-time duties at Inglewood and to order compliance with the requisites section 404(b) [now 404(d)] before the Inglewood Post Office is consolidated with the Marina Facility.” Wilson, at 807.<sup>5</sup> Similarly, in the Hopkins case, *supra*, the Court concluded “that there has been no consolidation because the Hopkins postmaster continues to operate the post office and to be responsible for the day-to-day management of this office....” Hopkins, at 299.

### **D. THE COMMISSION HAS FOUND POSTMASTERS ESSENTIAL**

The Postal Regulatory Commission (then the Postal Rate Commission) has repeatedly recognized the essential nature of postmasters in its review of proposed post office closings. For example, in the very first decision the Commission rendered on the merits in a post office closing appeal, the Commission observed: “It is likewise clear from the legislative history cited above that the social existence of the community is to be considered. The Senate debate referred to the services provided by the postmaster or officer-in-charge outside the realm of postal business: assistance with correspondence and with Federal government business such as tax returns, social security, and other concerns of ordinary individual life.” In the matter of Lone Grove, Texas, PRC Docket No. A79-2, at 22 (May 7, 1979).

From the foregoing, it appears clear that Congress, in its legislative history and in its enactments, and the courts, and the Commission, would not agree with the Postal Service's determination that the “designation of a retail facility as a Post Office... would not depend on whether any responsible personnel is a postmaster.” 76 Fed. Reg. 17795.

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<sup>4</sup> The Postal Service cites the Wilson case for this proposition in its Tuscaloosa litigation. Post Service Memorandum at 21.

<sup>5</sup> The Wilson Court ultimately concluded that Inglewood had lost its postmaster before the effective date of present Section 404(d).

### III. PUBLIC POLICY

No responsible observer would deny that today's Postal Service has a tough job and is facing tough times. As it very recently told the federal district for the Northern District of Alabama: "In order to continue providing universal mail service, the Postal Service must find ways to reduce costs in order to survive. The discontinuance of the Eastside Station represents one such cost-reduction effort." Postal Service Memorandum in its Tuscaloosa litigation at Page 32. However, its recent financial trials do not give the Postal Service the option to abort or evade either its Congressionally-mandated mission, or the statutory public policy governing it.

#### A. CONGRESS: DEFICITS DO NOT JUSTIFY POST OFFICE CLOSINGS

Congress did not mince words in setting postal policy. The Postal Service is "a basic and fundamental service," and "shall provide prompt, reliable, and efficient services to patrons in all areas and shall render postal services to all communities." 39 USC § 101(a). Congress was also very explicit that deficits do not justify post office closings:

"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. No 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." 39 USC § 101(b).

Congress subsequently created an enforcement mechanism for this policy by adding present 39 USC § 404(d), granting a public right of appeal to the Postal Regulatory Commission for "[a]ny determination of the Postal Service to close or consolidate any post office." 39 USC §404(d)(5).

Congress also mandated consideration of "effect of such closing or consolidation on the community," the effect on employees, and "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." 39 USC §404(d)(2)(A)(i), and (ii), and (iii).

The fairly extensive legislative history for Section 404(d) shows unmistakably that Congress meant what it enacted. Senator Randolph, when he proposed legislation which became Section 404(d) "specifically criticized the Postal Service for 'overlooking' § 101(b)," and objected to the "'indiscriminate closing of our rural and small town post offices' as well as the decision by the Postal Service to 'create branches out of many post offices close to large cities' and thus 'transfer a community oriented post office into one administered through the

instructions and directives of large city postmasters with little or no community involvement.””  
Knapp, supra at 161-62.

## **B. THE “EFFECTS ON THE COMMUNITY” ARE TO BE CONSIDERED BROADLY**

From the first page of its first decision on a Section 404(d) appeal, the Commission found: “the United States Postal Service, we find, has not given sufficient breadth to this provision [Section 404(d)(2)(A)], in view of the related legislative intent....” In the matter of Lone Grove, Texas, PRC Docket No. A79-1 (May 7, 1979) at 1 (citations omitted). The Commission has subsequently explained that the Postal Service’s responsibilities in this regard go beyond just “balancing its books:”

“The Postal Service must be more than ‘a prudent manager of its own operations.’ The Service is also required to serve as ‘the guardian of the public interest.’ therefore, the Postal Service should investigate the effect a small post office closing would have on the community, at the outset of its decision making process, to ensure that these non-postal effects are properly considered.” In the matter of Bill, Wyoming, PRC Docket No. A79-22 (October 18, 1979) at 9 (citations omitted; emphasis in original).<sup>6</sup>

The Postal Service Proposed Rule goes the other way, by eliminating notice, public comments, or consideration of employees or government policy for any action that the Service does not define as a “discontinuance.”

Even if the Postal Service’s Proposed Rule was, somehow, a reasonable response to its financial hard times, it cannot prevail in the face of statutory language which is “inclusive, unmodified, and mandatory.” United Parcel Service, Inc. v. United States Postal Service, 455 F.Supp. 857, 881 (E.D.PA, 1978), aff’d, United Parcel Service, Inc. v. United States Postal Service, 604 F.2d 1370, (3d. Cir. 1979), Cert. den. United Parcel Service, Inc. v. United States Postal Service, Inc., 446 U.S. 957 (1980).<sup>7</sup>

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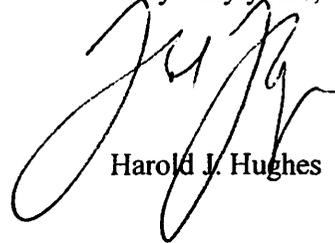
<sup>6</sup> “Under the rubric of ‘effects on the community’ the Postal Service must also consider the various secondary effects of a post office closing that are not directly connected with mail services. These secondary effects include the intangible benefits the post office provides to a small community, as a community center. Unless these secondary effects are properly considered the Postal Service cannot properly close or consolidate a post office and remain in compliance with the statute.” In the matter of Bill, Wyoming, at Page 8 (citations omitted).

<sup>7</sup> “Perhaps, under some abstract ‘reasonableness’ test the Postal Service would prevail; perhaps, divorced from the statutory framework, we could be convinced that the Postal Service’s allocation of responsibility is the more reasonable.... The words of the statute, however provide the framework for our musings on reasonableness, and those words are inclusive, unmodified, and mandatory.” *Id.*

April 26, 2011  
Re: Postal Service Proposed Rule  
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In the face of precise Congressional intent and clear statutory guidance, in my opinion the Postal Service does not have the “wobble room” either to administratively erase “consolidation” from the governing statute, nor to erase “the statutory distinction between an independent Post Office and its subordinate stations and branches, which Congress has followed for well over a century”<sup>8</sup>

Very truly yours,

A handwritten signature in black ink, appearing to read 'Harold J. Hughes', written in a cursive style.

Harold J. Hughes

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<sup>8</sup> Postal Service Memorandum in Tuscaloosa litigation at 18.