

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

In the Matter of:

Pinehurst Village Station
Pinehurst, North Carolina 28370
(John M. Marcum and Bettye M.
Marcum, Petitioners)

Docket No. A2011-49

**RESPONSE OF UNITED STATES POSTAL SERVICE TO MOTION OF
PETITIONERS JOHN AND BETTYE MARCUM FOR AN ORDER
SUSPENDING THE DECISION TO CLOSE PINEHURST STATION**
(October 14, 2011)

By means of Order No. 819 (August 22, 2011), the Commission docketed correspondence from customers of the Pinehurst Village Station in Pinehurst, North Carolina, assigning PRC Docket No. A2011-49 as an appeal pursuant to 39 U.S.C. § 404(d). On August 23, 2011, and again on October 7, 2011, Petitioners filed motions styled as applications to suspend the discontinuance of Pinehurst Village Station.¹ Pinehurst Village Station closed on August 19, 2011. See Revised Petition for Review Received from John Marcum, PRC Docket No. A2011-49 (August 23, 2011) (Application 1) (reflecting August 19, 2011 closure date). As explained below, Petitioners' application for suspension should be denied.

¹ Revised Petition for Review Received from John Marcum, PRC Docket No. A2011-49 (August 23, 2011); Motion of Petitioners John and Bettye Marcum for an Order Suspending the Decision to Close Pinehurst Station, PRC Docket No. A2011-49 (October 7, 2011).

As an initial matter, this appeal is not within the scope of the Commission's jurisdiction under 39 USC § 404(d). Pinehurst Village Station is not an independent Post Office, and Commission jurisdiction under 39 U.S.C. § 404(d) does not attach. As the Commission is well aware, the Postal Service understands that the Commission lacks subject matter jurisdiction under 39 U.S.C. § 404(d) to review Postal Service decisions regarding the discontinuance of stations and branches. See *generally* Reply Brief of the United States Postal Service, Section III (pp. 6-12), PRC Docket No. N2009-1 (December 16, 2009); Comments of United States Postal Service Regarding Jurisdiction Under (Current) Section 404(d), PRC Docket No. A2010-3 (April 19, 2010); Initial Comments of the United States Postal Service, Section I (pp. 2-7), PRC Docket No. RM2011-13 (October 3, 2011).² In the Postal Service's view, the appeal procedures of 39 USC § 404(d) do not apply to this matter because Pinehurst Village Station is not an independent Post Office. Thus, the Commission's Rules of Practice for Post Office closings found in Section 3001.110 et seq. do not apply in this instance. Petitioners fail to allege facts that constitute a condition precedent to any jurisdiction of the Commission under Section 404. 39 U.S.C. § 404(d)(5).

Second, even assuming Section 404(d) were interpreted to embrace the discontinuance of stations and branches, this proceeding does not involve a loss of retail services to the community for reasons that match those in PRC Docket

² In turn, the Postal Service is well aware that the Commission claims a broader jurisdiction. See PRC Order No. 814, Notice of Proposed Rulemaking Regarding Appeals of Postal Service Determinations to Close or Consolidate Post Offices, PRC Docket No. RM2011-13 (August 18, 2011), at 10-11.

No. A2010-3. In that proceeding, the Commission concluded that the Section 404(d) procedural requirements apply only where postal customers lose access to postal services, and postal customers do not lose access to postal services where alternate retail facilities are located in “close proximity” to the discontinued station.³ Because of the close proximity of other postal facilities and the availability of postal services through <http://www.USPS.com/> and other alternate access options, the discontinuance of Pinehurst Village Station will not cause postal customers to lose access to postal services. See Comments of United States Postal Service, PRC Docket No. A2011-49 (October 12, 2011), at 2-3 (identifying nearby retail access points, including the Pinehurst Post Office located approximately 1.6 miles from Pinehurst Village Station, and the Wells Fargo Bank stamp consignment site located within a mile of Pinehurst Village Station). Consequently, the Postal Service submits that the Section 404(d) procedures do not apply on this separate basis. Accordingly, the relief requested is not, as a matter of law, available to Petitioners, and the application for suspension should be denied on these grounds alone.

Third, even assuming the Section 404(d) requirements were applied in the context of the discontinuance of Pinehurst Village Station, the Postal Service satisfied the salient provisions of Section 404(d). On March 25, 2011, the Postal Service distributed a letter stating that consolidation of Pinehurst Village Station was under consideration. Administrative Record at Item No. 23, pg. 1. The letter included a questionnaire and invited comments on the potential change to the

³ PRC Order No. 477, Order Dismissing Appeal, Docket No. A2010-3 (June 22, 2010), at 7-8.

postal retail network. *Id.* The Postal Service also made the questionnaire available over the counter for retail customers at Pinehurst Village Station. Through this notification, the Postal Service furnished customers with well over 60 days' notice of the Postal Service's intention to consider discontinuance of the facility. Upon making the final decision to discontinue Pinehurst Village Station, the Postal Service announced its decision publicly through a public notice posted on July 8, 2011. Application 1, Attachment.

Fourth, Petitioners' application for suspension is moot. Both applications for suspension, dated August 23, 2011 and October 7, 2011, were filed after Pinehurst Village Station closed on August 19, 2011. Thus, the period for suspending implementation of the final determination had passed, and as described below, the Postal Service had already undertaken the measures necessary to close Pinehurst Village Station. Accordingly, Petitioners' motion should be denied as moot.

Fifth, in earlier station and branch discontinuance appeals, the Commission has declined either to address or to grant applications for suspension of scheduled closings. See PRC Docket No. A2011-1 (application for suspension filed on October 19, 2010; station closed on December 31, 2010; order affirming final determination issued on February 15, 2011); PRC Docket No. A2011-4 (application for suspension filed on November 22, 2010; station closed on December 31, 2010; order affirming final determination issued on March 16, 2011); PRC Docket No. A2011-5 (application for suspension filed on December 6, 2010; station closed on January 14, 2011; order affirming final

determination issued on March 31, 2011); PRC Docket No. A2011-16 (application for suspension filed on May 17, 2011; station closed on June 17, 2011; order affirming final determination issued on September 8, 2011); PRC Docket No. A2011-18 (application for suspension filed on June 20, 2011; station closed on July 8, 2011; order affirming final determination issued on September 20, 2011). In these cases, the Commission did not interfere with the Postal Service's completion of scheduled closures even though the Commission had not ruled on petitioners' appeals. See *id.*

Finally, the Postal Service investigated the facts pertaining to Pinehurst Village Station; the relief requested by the Petitioners is not practicable to implement at this late stage and would significantly frustrate Postal Service operations. The Postal Service has already implemented the final determination, taking actions that include the following:

- Removal of postal equipment and property from the premises;
- Relocation of affected employees previously working at Pinehurst Village Station, in accordance with applicable standards; and
- Implementation of various operational changes to coincide with the discontinuance of Pinehurst Village Station on August 19, 2011.

If the Commission were to grant the requested relief, it would interfere with Postal Service operations significantly. Also, many customers of Pinehurst Village Station made their own adjustments to accommodate their postal retail and delivery needs based on the August 19, 2011 discontinuance.

For the reasons set forth above, the application for suspension should be denied.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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