

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

McCallsburg Post Office
McCallsburg, Iowa

Docket No. A2012-86

COMMENTS OF THE PUBLIC REPRESENTATIVE

(February 8, 2012)

I. INTRODUCTION AND BACKGROUND

On November 29, 2011, the Commission docketed the petition for review of the closing of the McCallsburg Post Office.¹ On December 13, 2011, the Commission issued an order instituting the current review proceedings, appointing a Public Representative, and establishing a procedural schedule.² Thereafter, on December 14, 2011, the Postal Service filed an electronic version of the administrative record concerning its Final Determination.

The Petitioner, Robin Pruisner, has filed a Participant Statement in lieu of a formal legal brief in which she set forth her objections to the closure of the McCallsburg

¹ Petition for Review Received from Robin Pruisner Regarding the McCallsburg, Iowa Post Office 50154, PRC Docket No. A2012-86 (November 29, 2011).

² Notice and Order Accepting Appeal and Establishing Procedural Schedule, December 13, 2011 (Order No. 1042).

Post Office.³ The Postal Service filed comments supporting its closure determination on January 3, 2012, in lieu of a legal brief.⁴

II. STATEMENT OF FACTS

The McCallsburg Post Office is described by the Postal Service in its Final Determination as an EAS-11 level post office in McCallsburg, Iowa. Before being closed, the McCallsburg Post Office provided service to 128 post office box customers, 1 general delivery customer, and 85 rural carrier delivery customers. Item No. 33, Proposal to Close the McCallsburg, IA Post Office and Establish Service by Rural Route Service (Proposal), at 2. Revenue at the McCallsburg Post Office has declined from \$29,709 in FY 2008 to \$25,563 in FY 2010.

The Postmaster retired on January 29, 2010. Item No. 18, Post Office Closing or Consolidation Proposal Fact Sheet at 1. This, according to the Postal Service, was the event that precipitated its review of the McCallsburg Post Office as a candidate for closing. Final Determination at 2. Since that time, a noncareer postmaster relief employee has been installed to operate the McCallsburg Post Office. Item No. 33, Proposal, at 9.

On October 24, 2011, the Final Determination to close the McCallsburg Post Office was approved. Final Determination at 10. The decision was based upon the postmaster vacancy, findings of a minimal workload, a reduction in office revenue,⁵ the variety of retail options available,⁶ minimal impact on the community, and estimated financial savings.⁷ The Final Determination responded to some of the concerns expressed by postal customers at the June 15, 2011, public meeting.

³ Participant Statement of Robin Pruisner, January 3, 2012.

⁴ United States Postal Service Comments Regarding Appeal, January 23, 2012 (Postal Service Comments).

⁵ Proposal at 2.

⁶ Id. at 2-7.

⁷ Id. at 9.

III. POSITIONS OF THE PARTIES

A. The Petitioner

As evidenced by Appendix I to her petition, the Petitioner has thoroughly examined the review procedures that are mandated by USPS Handbook PO-101. She has concluded that the Postal Service has committed wholesale violations of those procedural requirements. Many of the failures listed consist of filling out fact-finding forms inaccurately. The Petitioner also emphasizes that the Postal Service omitted from the hardcopy version of the administrative record that it posted at the McCallsburg Post Office a letter opposing the closing submitted collectively by the town of McCallsburg, and of the letter of Senator Grassley urging the Postal Service not to close it. Petitioner Statement, Item 21. She also compiled a long list of concerns raised by the citizens of McCallsburg at the June 15, 2011, community meeting to which she concludes the Postal has not responded, either in its Proposal, or its Final Determination. See Appendix II to the Petition.

Substantively, the Petition argues that the Postal Service's Final Determination is premature, since decisions have yet to be made that are prerequisite to making a valid Final Determination that fully satisfies the notice requirements of Section 404(d). These include a decision as to the fate of the current postmaster relief if the McCallsburg Post Office is closed (Petitioner's Statement, Items 10 and 19), and a decision as to what form of alternative delivery service will be provided. *Id.*, Item 7.

The Petitioner argues that the Postal Service's estimated financial savings from the closing are incomplete. She argues that until the fate of the current PMR is known and the form of alternative delivery is known, a valid estimate of the net savings cannot be made. *Id.*, Item 19. She also argues that the Postal Service's estimate of net savings is inaccurate because it omits the fact that the owners of the building that the Postal Service currently leases has made a written offer to allow the Postal Service to

continue to use the building rent free.⁸ She asserts that one-time costs of closing—such as the cost of installing cluster boxes, are omitted. *Id.*, Item 20. Finally, the Petitioner asserts that the loss of rental income from post office boxes has been omitted. *Id.*, Item 19.a.

Throughout the Petitioner Statement, the Petitioner argues that replacing the McCallsburg Post Office with either cluster box delivery, or rural carrier delivery, will reduce the level of retail service in many respects, most having to do with the need to wait until the carrier appears at a clusterbox or the customer’s rural delivery box in order to conduct special service transactions.

B. The Postal Service

On January 23, 2012, the Postal Service filed comments in lieu of the answering brief permitted by Order No. 1042. The Postal Service concedes that the Administrative Record contains inaccuracies, but it argues that this “reflects a progressive and developing process” and asserts that it is to be expected that such documentation “will reflect greater accuracy as more information becomes available.” Postal Service Comments at 2. Note 4. With respect to its departures from the instructions and standards in USPS Handbook PO-101, the Postal Service characterizes them as “goals that exceed the requirements imposed on the Postal Service by 39 U.S.C. 404(d).” It says that allegations of failing to comply with its own “goals” do not address the ultimate issue raised by the appeal—whether the Postal Service’s Final Determination complies with 39 U.S.C. section 404(d).” *Id.* at 3, note 8.

The Postal Service spends the balance of its comments attempting to rebut the Petitioner’s itemization of the added difficulties of accessing various forms of retail service that would result from closing the McCallsburg Post Office.

⁸ *Id.*, Item 19. Petitioner notes there that the written offer of rent-free use of the building from its owners has been omitted from the Administrative Record.

IV. STANDARD OF REVIEW AND APPLICABLE LAW

A. Standard of Review

The Commission's authority to review post office closings is provided by 39 U.S.C. § 404(d)(5). That section requires that the Postal Service's determination be reviewed on the basis of the record that was before the Postal Service. The Commission is empowered by section 404(d)(5) to set aside any determination, findings, and conclusions that it finds are: (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 in the record. Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal Service for further consideration. Section 404(d)(5) does not, however, authorize the Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service.

B. The Law Governing Postal Service Determinations

Prior to making a final determination to close or consolidate a post office, the Postal Service is required by 39 U.S.C. § 404 to consider: (i) the effect of the closing on the community served; (ii) the effect on the employees of the Postal Service employed at the office; (iii) whether the closing is consistent with the Postal Service's provision of "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 due to the closing; and (v) such other factors as the Postal Service determines are necessary. See 39 U.S.C. § 404(d)(2)(A)

In addition, the Postal Service's final determination must be in writing, address the aforementioned considerations, and be made available to persons served by the post office. 39 U.S.C. § 404(d)(3). Finally, the Postal Service is prohibited from taking

any action to close a post office until 60 days after its final determination is made available. 39 U.S.C. § 404(d)(4).

V. ADEQUACY OF THE POSTAL SERVICE'S FINAL DETERMINATION

After careful review of the Postal Service's Final Determination, the materials in the Administrative Record, the arguments presented by Petitioners and the Petition submitted by customers of the McCallsburg Post Office, and the Postal Service Comments, the Public Representative concludes that the Postal Service has not followed applicable procedures mandated by USPS Handbook PO-101 and 39 U.S.C. 404(d). Largely because those procedures and standards were not observed, key factual underpinnings of the decision to close the McCallsburg Post Office are not supported by substantial evidence on the Administrative Record.

USPS Handbook PO-101 and 39 U.S.C. 404(d). The Postal Service attempts to dismiss the numerous violations of USPS Handbook PO-101 documented in Appendix I of the Petitioner's Statement as mere guidelines or suggestions without any legal significance in determining whether the Postal Service has complied with section 404(d).⁹ This view of the significance of complying with the handbook is invalid.

The instructions contained in USPS Handbook PO-101 are a set of internal guidelines and procedures that are intended to flesh out the statutory right of patrons of small post offices to have decisions to close those post offices meet certain procedural, evidentiary, and public policy standards. USPS Handbook PO-101 itself says, in its introduction, that it:

... serves as a tool for providing district Post Office review coordinators information on policies and procedures related to the discontinuance of Post Offices. Through adherence to these policies and procedures, the Post Office will assess the viability of and customer access to Post Offices, ensuring that the Postal Service continues to provide cost-effective universal service to all Americans

⁹ See Postal Service Comments at 2, note 4, and page 3 at note 8.

The purpose of the instructions in the handbook, therefore, is to impose discipline on the District-level manager's determination, in the first instance, to close a post office. They are not, as the Postal Service suggests, relevant only to the final determination made by Headquarters.¹⁰ It is important to note that most of the instructions in the handbook are framed in mandatory, not discretionary terms. Courts often reverse decisions made by Federal agencies that adopt administrative rules intended to protect a statutory right, and then fail to follow their own administrative rules.¹¹ No court would deem every rule in Handbook PO-101 as essential to securing the statutory right of appeal delineated in section 404(d), but basic rules that require the facts in the Administrated Record be reviewed for accuracy at the District level would likely qualify.¹² For example, Handbook PO-101, 133.1 states that

the district Post Office review coordinator is responsible for thoroughly reviewing Official Records and certifying their accuracy.

Section 431 states that

Final determinations and appeal decisions are based on the information in the Official Record. Thus the importance of thorough documentation cannot be overemphasized.

The Petitioner Statement and Appendix I show that there is a wealth of inaccurate statements made throughout the Administrative Record, and that a number of facts that are necessary to make valid findings under section 404(d)(2) were omitted. The Petitioner's Statement makes a convincing case that the above standards for compiling and reviewing the Administrative Record were not followed, as will be discussed in more detail below.

¹⁰ See Postal Service Comments at 3, note 9.

¹¹ See, e.g., *Vitarelli v. Seaton*, 359 U.S. 535, 539-40 (1959). For a statement of the general principle that Federal agencies must follow their own internal rules where they affect a person's rights, see *U.S. v. Nixon*, 418 U.S. 683, 696 (1974).

¹²

Access to retail services. As a general matter, a small rural post office is a facility where nearby customers can come, largely at the time of their choosing, to access a secure rented post office box, or obtain complicated special services—such as weighing, rating, and mailing a large parcel using a credit card. With local access to a post office, they do not have to lie in wait—either at the side of road by their own mailbox, or at the site of a cluster box—until the carrier arrives. A small post office is also a place where a local school or church can enter a permit mailing without traveling to a more distant facility. Also, a small post office is almost always the community center of gravity, where patrons exchange local news in person and consult a community bulletin board.

As a general matter, it is a fiction that access to retail services—and the cultural activity that flourishes with such access—does not suffer when a small post office is closed. This is the case with the closing of the McCallsburg Post Office, as the Petitioner’s Statement abundantly documents. The Postal Service’s findings in its Final Determination that access to retail services will not suffer, and there will be no adverse civic impact on McCallsburg, are invalid. The Public Representative is aware, however, that the Commission has not been disposed to remand a Final Determination based on the patent invalidity of such boilerplate findings.

More relevant are the defects in the Postal Service’s Final Determination that arise from the fact that it has not yet made decisions that are basic to a valid assessment of either the impact of closing on the McCallsburg community’s access to service or the impact on its own finances.

Key omissions with respect to access to retail services. The Postal Service has not decided whether it will provide alternative service in the form of rural carrier delivery or cluster boxes, or install a collection box in McCallsburg. Final Determination, Items I. 15 and I. 22. Yet the Postal Service’s assurances that access to retail services will not be impaired when the McCallsburg office is closed relies almost entirely on assurances that a rural carrier will provide most forms of retail service that formerly had been provided by at the post office. Final Determination Items I. 6, I. 9, I. 11, I. 13, I. 14, I. 22,

I. 24, I. 32. If the current patrons of the McCallsburg Post Office only get alternative service in the form of a cluster box, none of the Postal Service's conclusions about unimpaired access to service are valid. Therefore, the state of the Administrative Record does not allow the Postal Service to reach an informed conclusion as to whether closing the McCallburg Post Office is consistent with its duty to "provide a maximum degree of effective and regular postal services to rural areas" under section 404(d)(2)(A)(iii).

Key omissions with respect to calculating net financial impact. The Postal Service's premature decision to close the McCallsburg Post Office also prevents it from making a valid finding concerning the closing's financial impact. The Postal Service's calculation is as follows (Final Determination at 9):

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Postmaster Salary (EAS-11)	\$33,168
Fringe Benefits @ 33.5%	\$11,111
Annual Lease Costs	<u>\$6,480</u>
Total Annual Costs	\$50,759
Less Annual Cost of Replacement Service	<u>- 16,618</u>
Total Annual Savings	<u>\$34,141</u>

The postmaster's salary makes up most of the savings assumed. It is unreasonable to count this as a savings, however, unless one knows the fate of the PMR, or can attach some probability to it. The Postal Service has not decided what it is going to do with the current PMR. It says that the PMR "may be separated from the Postal Service, however, attempts will be made to reassign the employee(s) to a nearby facility." Final Determination at 10. The Postal Service may or may not actually save the salary of the PMR, depending on whether the PMR is placed in another facility, and

whether the PMR takes a vacant position at that facility or is added to that facility's staff. If the PMR will be placed in another facility as an addition to that facility's staff, no salary cost will be saved. A finding of economic savings that includes the postmaster's salary where the likelihood that it will actually be saved cannot be determined from the Administrative Record is not supported by substantial evidence. Because the Postal Service's estimate of savings is the sole benefit that can be associated with closing the McCallsburg Post Office, the determination to close it is not supported by substantial evidence, which violates section 404(d)(5)(C).

The only other source of savings cited by the Postal Service is rent of \$6,480. The Postal Service, however, chose to exclude from the Administrative Record the written offer of the owners of the building housing the McCallsburg Post Office to let the Postal Service operate out of that the building free of charge.¹³ For the cost of rent to be included in its estimate of savings, one would have to assume that the Postal Service would insist on paying it as a gratuity if it were to continue to operate the McCallsburg Post Office. Given the Postal Service's current financial predicament, such philanthropy is unlikely. A finding of economic savings that includes rent under these circumstances is arbitrary and capricious, in violation of section 404(d)(5)(A).

The Postal Service's estimate of net financial effect also omits the post office box rent revenue that it would lose by closing the McCallsburg Post Office. Since the Postal Service ignored this effect, one can only speculate as to the box revenues that the Postal Service would forego by closing the McCallsburg Post Office. There are five box sizes that the Postal Service offers, and seven rate groups that vary by geographic location. If one assumes that the average box size (Size 3) is representative of the

¹³ Petition's Statement, Item 19. Findings and conclusions must be based on an Administrative Record that cannot be supplemented or corrected on appeal. Therefore, the Postal Service clearly benefits by leaving facts that do not support its position out of that record.

McCallsburg boxes, and that the lowest rate group applies to McCallsburg (Rate Group 7), the annual rent lost could be reasonably estimated as \$60 x 128 boxes = \$7,680.¹⁴

The Postal Service does not deny that rent could be obtained for free if the McCallsburg Post Office were kept open, and therefore should be deducted from the Postal Service's estimate of gross savings, or that box rental revenue lost should be estimated and deducted from the Postal Service's estimate of net savings. Instead, it brushes both issues aside, arguing that taking them into account would not have a noticeable impact on the total savings calculation. Postal Service Comments at 16. The Postal Service's estimate of net annual savings, however, is only \$34,141. Accounting for rent not required and box rent not earned reduces \$34,141 to \$19,981—a reduction of over 40 percent.

Postmaster salary and benefits cannot be counted as savings given the uncertain state of the record. Therefore, the proper estimate of the net financial effect from closing the McCallsburg Post Office is:

Postmaster Salary (EAS-11)	\$	0
Fringe Benefits @ 33.5%	\$	0
Annual Lease Costs	\$	<u>0</u>
Total Annual Costs Expenses Saved	\$	0

¹⁴ Post Office Box rates used are those in effect as of January 22, 2012. See <http://pe.usps.com/cpim/ftp/manuals/dmm300/Notice123.pdf>. Above, it was pointed out that it benefits the Postal Service to omit from the Administrative Record the fact that rent would not be required if McCallsburg remained open. It similarly benefits the Postal Service to omit from the Administrative Record any estimate of box rental revenue that would be lost if McCallsburg were closed. The Postal Service could have easily filled this hole in the record by asking patrons whether they currently rent a box and whether they would rent a box elsewhere if McCallsburg were closed. The fact that it is the Postal Service that benefits when it leaves such holes in the Administrative Record highlights the "Through the Looking Glass" character of closure appeals as they have been implemented under section 404(d).

Less Annual Expense Incurred for Replacement Service	\$ - 16,618
Less Annual Box Rental Revenue Lost	<u>\$ - 7,680</u>
 Total Annual Net Loss	 \$ - 24,298

VI. CONCLUSION

The Postal Service's estimate of the net savings that would result from closing the McCallsburg Post Office does not satisfy the standards of revue set out in section 404(d)(5). An estimate of net savings from closing the McCallsburg Post Office that would satisfy the standards of revue set out in section 404(d)(5) is negative. The Administrative Record, had it been properly compiled, would show that closing the McCallsburg Post Office is more likely to cost money than to save money. There is no non-financial benefit that can plausibly be associated with closing the McCallsburg Post Office, and none has been demonstrated on the Administrative Record. Therefore, the Final Determination to close must be remanded.

Respectfully Submitted,

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