

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

In the Matter of:
Parlin Post Office
Colorado 81239

Docket No: A2012-102

REPLY BRIEF OF THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY
OF GUNNISON, COLORADO

COMES NOW the Board of County Commissioners of the County of Gunnison, Colorado (hereinafter "Gunnison County"), by and through David Baumgarten, Gunnison County Attorney, and files the attached Reply Brief of the Board of County Commissioners of the County of Gunnison, Colorado as follows:

I. SUBJECT INDEX.

I.	Subject Index.....	1
II.	Cases and Authorities.....	2
III.	Statement of the Case; Position of Intervenor Gunnison County.....	3
IV.	Discussion of Issues.....	4
	A. Statutory Obligations.....	4
	B. Handbook.....	6
	C. Postal Regulatory Commission Advisory Opinions.....	7
	D. Requirements, Guidelines, And Mistakes To Avoid.....	10
	E. The Determination To Close The Parlin Post Office Is Without Adequate Observance Of Statutory Obligations, The Handbook, The Advisory Opinions, And Case Law.....	12
V.	Proposed Holding.....	18

II. CASES AND AUTHORITIES.

	Page(s)	
A. U.S.C.		
39 U.S.C. §101(a).....	4, 10, 15	
39 U.S.C. §101(b).....	4, 6, 10	
39 U.S.C. 404(a)(3).....	5	
39 U.S.C. 404(b).....	5	
39 U.S.C. 404(d).....	5	
39 U.S.C. 404 (d)(1).....	4, 10, 18	
39 U.S.C. 404 (d)(2)(A).....	5	
39 U.S.C. 404 (d)(2)(A)(i).....	3, 11	
39 U.S.C. 404 (d)(2)(A)(iii).....	4, 11	
39 U.S.C. 404 (d)(2)(A)(iv).....	4, 11, 17	
39 U.S.C. 404 (d)(5).....	4, 11, 12	
B. Case Law.		
<u>Knapp v. United States Postal Service</u> , 449 F.Supp. 158, 161 (1978).....	5, 10	
C. Handbook PO-101, dated July 2011.....		6, 7, 10
D. Advisory Opinions.		
Advisory Opinion Concerning The Process For Evaluating Closing Stations And Branches ("Advisory Opinion Docket N2009-1).....	3, 9, 10, 11, 12, 15, 16	
Advisory Opinion On Retail Access Optimization Initiative, Docket N2011-1 ("Advisory Opinion Docket N2011-1").....	7, 8, 11, 15, 18	

**III. STATEMENT OF THE CASE; POSITION OF INTERVENOR
GUNNISON COUNTY.**

The United States Postal Regulatory Commission, in its Docket No. N2009-1, “Advisory Opinion Concerning The Process For Evaluating Closing Stations And Branches” (“Advisory Opinion Docket N2009-1”) recommended to the Postal Service that Postal Service decision makers “should be required to directly contact and seek input about community issues from ... elected local officials ...” Advisory Opinion Docket N2009-1, at p. 48. While the Postal Service did not follow this recommendation in the instant case, it is nonetheless a sound recommendation. Therefore, the Board of County Commissioners of the County of Gunnison, Colorado, the local government of general jurisdiction in Gunnison County, formally has requested intervenor status to oppose the closure of the Parlin Post Office.

The citizens of Gunnison County cherish its sense of community and place. The County Commissioners strive to preserve and promote the well-being of the County’s citizens, natural environment and rural character. Gunnison County delivers services and sets standards that reflect our values and preserve our unique quality of life for present and future generations to enjoy.

The County Commissioners urge the Postal Regulatory Commission that the Postal Service’s determination to close the Parlin, Colorado 81239 Rural Post Office:

1. Failed to consider accurately the effect of such closing on the community served by the post office. See: 39 U.S.C. 404 (d)(2)(A)(i)

2. Failed to consider accurately whether or not – post closure – the Postal Service will continue to provide the “maximum degree of effective and regular postal services to rural areas, communities and small towns where post offices are not self-sustaining” (see: 39 U.S.C. 404 (d)(2)(A)(iii));
3. Placed undue weight on the economic savings to the Postal Service resulting from such closure (see: 39 U.S.C. 404 (d)(2)(A)(iv)); and
4. Is arbitrary, without adequate observance of procedure, and is unsupported by substantial evidence (see: 39 U.S.C. 404 (d)(5)).
5. Does not satisfy the burden on the Postal Service to demonstrate that closure is a “necessity” (see: 39 U.S.C. 404 (d)(1)).

IV. DISCUSSION OF ISSUES.

A. Statutory Obligations.

The Postal Service operates as a basic and fundamental service to the American public that binds the nation together through the personal, educational, literary, and business correspondence of the people. 39 U.S.C. §101(a). The Postal Service must provide “prompt, reliable and efficient services to patrons of all areas and shall render postal services to all communities.” *Id.*

In rural areas, communities, and small towns where post offices are not self-sustaining, the Postal Service must provide a maximum degree of effective and regular postal services. 39 U.S.C. §101(b). The Postal Service may not close a small post office 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.”

Id.

Under Title 39 U.S.C §404(d), “prior to making a determination ... as to the necessity for the closing ... of any post office...” (emphasis added), the Postal Service must provide “adequate notice” of its intentions and each decision to close a Post Office must be based on statutorily mandated criteria. These criteria include:

- a. The effect on the community served;
- b. The effect on employees of the Post Office;
- c. 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;
- d. The economic savings to the Postal Service;
- e. Any other factors the Postal Service determines necessary. 39 U.S.C. §404 (d)(2)(A).

In 1996, Congress adopted Section 404(b) “to specifically limit the Postal Service’s power given under Section 404(a)(3) to close or consolidate post offices by requiring the consideration of specific matters (and) the making of specific findings...” Knapp v. United States Postal Service, 449 F.Supp. 158, 161 (1978).

Senator Randolph, when he proposed the legislation that was to become Section 404(b) on the floor of the U.S. Senate, made it clear that his interest was to deal with the problem of the physical closure of a post office, particularly as this relates to postal

services in rural areas, when he related this amendment to policy statement of the Postal Reorganization Act of 1970, Section 101(b), giving policy direction pertaining to the closing of post offices. Senator Randolph specifically criticized the Postal Service for overlooking Section 101(b). Hearing on S. 2844 Before the Sen. Comm. On Post Office and Civil Service, Part 4, 94th Cong., 2d Sess. 142-143 (1976)(“Hearings”). The Senator specifically objected to the “indiscriminate closing of our rural and small town post offices.” *Id.*

B. Handbook.

The Postal Service has stated that the Parlin Post Office is part of the Retail Access Optimization Initiative (“RAOI”); consequently, the Postal Service is required to conduct the investigation that could lead to closure of the Parlin Post Office pursuant to the “Handbook PO-101,” dated July 2011 (the “Handbook”).

The Handbook, at Section 32, Components of the Proposal, subsection 321, Description, requires that “(t)he proposal must describe and analyze all details sufficiently that both customers and senior management understand the nature and cause of the proposed change in service and the details of the replacement service.” (Emphasis added.) A common definition of “analyze” is “to study closely.”

The Handbook PO-101, at subsection 254, Analyzing The Meeting, requires the Consumer and Industry Contact to provide “written response to any customer questions that were unanswered at the (community) meeting.” The Handbook, at Section 26, Customer Comment Letters, requires that “A written response must be sent to each

customer comment. The response must address the individual concerns expressed by the customer.”

The Handbook, at subsection 321.2, Effect On The Community, requires that “(t)he proposal must include an analysis of the effect the proposed discontinuance might have on the community served by the retail facility.”

C. Postal Regulatory Commission Advisory Opinions.

The Postal Service Commission has authority to ensure that policies and procedures established by the Postal Service governing consolidations and closures comport with Title 39. In addition, the Commission retains limited authority through an appeal process to review certain proposed closings. Given that authority, Commission “Advisory Opinions” are particularly germane to this appeal.

1. Advisory Opinion On Retail Access Optimization Initiative.

The “Advisory Opinion On Retail Access Optimization Initiative,” Docket N2011-1 (“Advisory Opinion Docket N2011-1”) states “The question of suitable alternative access is a core concern of this regulatory review. Many alternatives offer only a limited array of postal services. The Postal Service indicates it is attempting to expand types and availability of alternative access. While this effort is laudable, in evaluating whether to close facilities it is insufficient ... Alternative access must be a presently available, viable and adequate substitute for existing access.” (Emphasis added.) Advisory Opinion Docket N2011-1, p.3.

After analyzing the PO-101 Handbook, the Commission found it to be a reasonable approach to implementing the Postal Service’s authority to close facilities,

but with a caveat: “The Postal Service must monitor the PO-101 process to assure ... actual consideration is given to specific community concerns...” Advisory Opinion Docket N2011-1, at. p.88. “(T)he Postal Service should continue to train local managers and review discontinuance recommendations to ensure community input received during the discontinuance review is given adequate consideration and weight.” Advisory Opinion Docket N2011-1, at. p. 89. (Emphasis added.)

The Commission has explained “the need for accurate, disaggregated, robust, and comparable data (throughout the Retail Access Optimization Initiative) process.” Advisory Opinion Docket N2011-1, p.5.

Postal Regulatory Commission Chairperson Goldway wrote a concurring opinion in the Advisory Opinion Docket No. N2011-1, in which he stated: “Clearly there continues to be a strong, bipartisan agreement that it is necessary for the nation to maintain a visible and vibrant mail delivery network and that small post offices are an important part of the system ... (T)he Commission has recently heard appeals on more than 60 individual post office closings. The records in these cases reveal a pattern of inaccurate and overly optimistic economic savings calculations and of careless disregard of community concerns ... (These cases) demonstrate an ongoing institutional bias within the Postal Service that presumes closing small post offices automatically provides cost savings and network efficiencies.” Advisory Opinion Docket N2011-1, pp. 117-118. (Emphasis added.)

2. Advisory Opinion Concerning The Process For Evaluating Closing Stations And Branches.

The “Advisory Opinion Concerning The Process For Evaluating Closing Stations And Branches,” Docket N2009-1 (“Advisory Opinion Docket N2009-1”) explicitly and candidly identified pitfalls for the Postal Service to avoid in closures; these include:

- a. “The Postal Service has provided Districts with factors to consider when evaluating potential closures ... However, it does not provide guidance or instructions either for gathering relevant and material information on those factors, or guidance on how to evaluate such information when applying those factors. No measures of importance are assigned to the factors each District must consider. No criteria are directed to District managers to ensure no discrimination results from their recommendation.” Advisory Opinion Docket N2009-1, at p. 43.
- b. “(T)he Postal Service should formalize and document its process for reviewing decision packages ... to ensure that all relevant factors have been properly considered...” Advisory Opinion Docket N2009-1, at pp. 43-44.
- c. “One area that requires more attention is assessment of the distinctive needs of each community.” Advisory Opinion Docket N2009-1, at p. 47.
- d. “If local management determines that customers have ready access to essential postal services before informing customers of their alternative access options and asking for comment, the Postal Service is devaluing the customer comment process and giving the appearance that seeking

customer comment is merely an afterthought.” Advisory Opinion Docket N2009-1, at p. 56.

D. Requirements, Guidelines, And Mistakes To Avoid.

The United States Code, the Handbook, the Advisory Opinions and case law provide the following requirements and guidelines to follow, and certain mistakes to avoid:

1. Ensure that the Postal Service is providing “prompt, reliable and efficient services to patrons of all areas.” 39 U.S.C. §101(a).
2. Provide the maximum degree of effective and regular postal services to rural communities. 39 U.S.C. §101(b).
3. Ensure that the Postal Service meets its burden to demonstrate that closure is a “necessity”. 39 U.S.C. 404(d)(1).
4. Limit the Postal Service’s power to close Post Offices by requiring consideration of specific matters and by requiring the making of specific findings. Knapp v. United States Postal Service, 449 F.Supp. 158, 161 (1978).
5. Perform actual analysis of “all details sufficiently that both customers and senior management understand the nature and cause of the proposed change in service ...” Handbook, Section 32.
6. Provide written response that addresses individual customer concerns. Handbook, Section 254.
7. Analyze effects on the community served. Handbook, Section 321.2.

8. Consider accurately the effect of a Post Office closing on the community served by the Post Office. 39 U.S.C. 404(d)(2)(A)(i).
9. Consider accurately whether or not – post closure – the Postal Service will continue to provide the “maximum degree of effective and regular postal services to rural areas ... where post offices are not self-sustaining.” 39 U.S.C. 404(d)(2)(A)(iii).
10. Give only the weight due to economic savings – as only one factor to be considered. 39 U.S.C. 404(d)(2)(A)(iv).
11. Adequately observe procedure. 39 U.S.C. 404(d)(5).
12. A proposed alternate (to an existing Post Office) must be an “adequate substitute.” Advisory Opinion Docket N2011-1, p.3.
13. During review, “actual consideration” and “adequate weight” must be given to specific community concerns. Advisory Opinion Docket N2011-1, p. 89.
14. Avoid an institutional bias with the Postal Service that presumes closing small post offices automatically provides cost savings and network efficiencies. Advisory Opinion Docket N2011-1, Concurring Opinion, pp. 117-118.
15. Affirmatively assign measures of importance to factors each District must consider in evaluating a potential closure. Advisory Opinion Docket N2009-1, p. 43.
16. Ensure that all relevant factors have been properly considered. Advisory Opinion Docket N2009-1, pp. 43-44.

17. Be attentive to the distinctive needs of each community. Advisory Opinion Docket N2009-1, p. 47.

18. Do not devalue the customer comment process, and do not give the appearance that seeking customer comment is merely an afterthought. Advisory Opinion Docket N2009-1, at p. 56.

E. The Determination To Close The Parlin Post Office Is Without Adequate Observance Of Statutory Obligations, The Handbook, The Advisory Opinions, And Case Law.

1. Standard of Law.

39 U.S.C. 404(d)(5) provides for an appeal of a determination of the Postal Service to close a post office; the Commission shall set aside any determination, finding and conclusions found to be: a. arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; b. with observance of procedure required by law; or c. unsupported by substantial evidence on the record.

2. "Request For Authorization".

The Postal Service initiated the possible closure of the Parlin Post Office in correspondence dated 12/9/10 from Walter McBain, Manager, Post Office Operations to Selwyn Epperson, District Manager. (Docket document #1). This "request for authorization to investigate a possible change in postal services" poses three rationales:

- a) Declining workload;
- b) Proximity to other post offices; and
- c) Alternate services could be provided by other means.

As illustrated below, the Administrative Record does not support any of those rationales.

3. No Declining Workload.

The "Record of Incoming Mail" (Administrative Record Document #11) identifies:

- a) A daily average of 89.4 first class letters;
- b) A daily average of 51.3 first class flats;
- c) A daily average of 1.1 priority parcels; and
- d) A daily average of 2.4 standard parcels.

This "record" was compiled over a period of 3/12/11 to 3/25/11. There is no document in the Administrative Record identifying that this average is declining. The "Record of Dispatched Mail" (Administrative Record Document #12) identifies:

- a) A daily average of 23.4 first class letters;
- b) A daily average of 0.4 first class flats;
- c) A daily average of 1.2 priority parcels; and
- d) A daily average of 0.6 standard parcels.

There is no document in the Administrative Record identifying that this average is declining. Indeed, revenue at the Parlin Post Office has remained consistent (and increased slightly: \$10,953 in FY 2008, \$12,824 in FY 2009, and \$11,393 in FY 2010.) Final Determination ("FD") at 2; Administrative Record Document #18, PS Form 4920; Administrative Record Document #33, Proposal, at 2. (This fact was recognized in the United States Postal Service "Comments Regarding Appeal" at p. 4.) Further, the "Community Fact Sheet" (Administrative Record Document #16) demonstrates that

population growth of 2.38% is anticipated in the community served by the Parlin Post Office.

Documents in the Administrative Record indicate that the number of customers served by the Parlin Post Office are almost double the number used by the Postal Service. See: Letter dated December 23, 2011 from Judith Ebaugh, citing 119 customers – not the 61 cited by the Postal Service.¹

4. Proximity To Other Post Offices.

The “Post Office Closing Or Consolidation Fact Sheet, Form 4920” (Administrative Record Document #18) identifies the nearest post office to be in the City of Gunnison – 11.7 miles from Parlin. This is a significant distance – particularly when viewed as a round trip of almost 23 miles to access a Post Office. Note: The vast majority of the “Returned Customer Questionnaires” indicate that customers of the Parlin Post Office do not pass other post offices during business hours while traveling to or from work, or shopping, or for personal needs. Only one questionnaire indicates that the customer does regularly pass other post offices.

The determination to close the Parlin Post Office – based on the data in the record – neither provides “prompt, reliable and efficient services to patrons of all areas”

¹ To ensure that the Postal Regulatory Commission is fully apprised, 5 individual members of the effected community filed appeals. It is appropriate that the Commission consider their statements in addition to the record that may have been considered in writing the “Final Determination.” The “Notice And Order Accepting Appeal And Establishing Procedural Schedule” dated January 5, 2012, identifies two methods for Petitioner’s to “explain their position with supplemental information or facts:

- a. File “a Participant Statement on PRC Form 61”; or
- b. File a brief with the Commission.

The following Participant Statements were filed and accepted on the docket of this matter; supplemental information or facts included in the Participant Statements are part of the record that may be considered by the Postal Regulatory Commission:

- a. Participant Statement of Judith Ebaugh;
- b. Participant Statement of Claire St. John;
- c. Participant Statement of Leon K. Oltmann;
- d. Participant Statement of Ruth E. Dolezal and Laurence E. Dolezal.

(39 U.S.C. §101(a)), nor is it being attentive to the “distinctive needs” of the community (Advisory Opinion Docket N2009-1, at 47). Requiring a 23 mile round trip to a post office – even augmented by highway delivery - is not an “adequate substitute” for a post office. (Advisory Opinion Docket N2011-1, p.3).

Not one “Returned Customer Questionnaire” (Administrative Record Document #22) expresses agreement with or satisfaction with the proposed closing. To the contrary, all the Questionnaires are unanimous in objecting to the proposed closing.

5. Alternate Services Could Be Provided By Other Means.

The “Postal Service Customer Questionnaire Analysis” (Administrative Record Document #23) is very revealing:

- a) Not one questionnaire is favorable to the proposal to close the Post Office;
- b) A host of citizen concerns are raised (e.g. irregular hours of rural route services, non-postal services, services to senior citizens, services about loss of community identity, detrimental effect on the business community) but all are met with a uniform and rather impersonal response;
- c) The Postal Service “responder” incorrectly references the “closest available post office” to be the “Bairoil Post Office” or the “Rawlins Post Office” (which are hundreds of miles away in Wyoming). The Postal Service references to the “Bairoil Post Office” and the “Rawlins Post Office” are repeated – after a Postal Service community meeting – not

once, but twice – in a document titled “Responsiveness to Community Postal Needs” (Administrative Record Document #33). This incorrect reference causes one to question the attention paid to the questionnaires. It is not a response that is “attentive to the distinctive needs of each community” (Advisory Opinion Docket N2009-1, p.47); rather, it does “devalue the customer comment process ...” and does “give the appearance that seeking customer comment is merely an afterthought.” (Advisory Opinion Docket N2009-1, at p.56). As Senator Randolph feared, the Final Decision is an example of an “indiscriminate closing of our rural post offices.”

- d) Customers of the Parlin Post Office provided to Selwyn Epperson with a 3 page “Petition And Postal Service Response Letter” (Administrative Record Document #27) signed by virtually every customer of the Parlin Post Office objecting to the proposed closure.

6. Purported “Savings”.

The estimate by the Postal Service of “economic savings” is incomplete. It reflects only:

- a) The elimination of a postmaster salary;
- b) The elimination of postmaster fringe benefits;
- c) The elimination of an annual lease; and
- d) An undocumented and unsupported increase of only \$1,139 per year for cost of “replacement services.”

There is no real analysis of the costs (e.g. time, vehicle, vehicle maintenance, mileage) of pick up, sorting, and delivery to and by a rural delivery person to the estimated 41 non-P.O. Box customers and 20 P.O. Box customers who currently use the Parlin Post Office. There also is no real analysis of the costs to the customers. Undue weight is given to this miscalculated "economic savings" – contrary to the fact that economics is only one factor to be considered. 39 U.S.C. 404(d)(2)(A)(iv).

7. Effect Of Such Closing On The Community Served.

The Record contains a letter from Larry and Ruth Dolezal, dated December 12, 2011 which states: "The Parlin Post Office was founded in 1880 and the history is unique to early Gunnison history. In winter, the only store located in the community, is closed and the post office is the hub of the community. (There are a number of other businesses located "up" the valley but none in the immediate area.) Parlin P.O. is a transfer point on the mail coming in from Salida Post Office, serving the Quartz Creek Valley a distance of over 16 miles. Travel time for the rural mail carrier would be double what she travels now. She has around 100 drops in summer, which does not count the ones in Parlin, At present she cannot sell stamps etc., and if this plan is implemented, would have no way to weigh packages. Many of us in the area are elderly and with our snow, cold and icy conditions, the added travel could be treacherous. My husband and I have been shipping packages to our military personnel in the combat zone. Over the past 6-7 years, we have shipped over 700 packages (55 so far this year). Parlin has had the flat rate priority mail boxes we need, has helped when we needed help, and the rural carrier and OIC are to be commended for their professionalism."

The Record is replete with references to the "loss of community" that the closure of Parlin Post Office will cause. The County Commissioners agree with those comments. The Board of County Commissioners of the County of Gunnison, Colorado respectfully requests that "actual consideration" and "adequate weight" be given to specific community concerns. Advisory Opinion Docket N2011-1, p.3.

8. The Postal Service Has Not Met Its Burden Pursuant To 39 U.S.C. 404(d)(1) To Demonstrate The Necessity For The Closing Of The Parlin Post Office.

39 U.S.C. 404 (d)(1) reads: "The Postal Service, prior to making a determination ... as to the necessity for the closing ... of any post office" (emphasis added) shall provide adequate notice of its intention. The Postal Service, in its "Comments Regarding Appeal" at p. 22 chooses to ignore the words "the necessity for the closing" as if they were not in 39 U.S.C. 404(d)(1); however, the words are in the statute and must be given meaning and effect. Fair meaning and effect would be to establish the burden that the Postal Service must meet as a prerequisite to closing a Post Office. The Postal Service has not met this burden.

V. PROPOSED HOLDING.

Gunnison County respectfully requests the Postal Regulatory Commission to remand the Postal Service's "Final Determination" for further action by the Postal Services with instructions that closure is not warranted by the record.

Respectfully submitted this 1st day of March, 2012.


/s/ David Baumgarten

David Baumgarten
Gunnison County Attorney
200 East Virginia Avenue, Suite 262
Gunnison, CO 81230
Office: (970) 641-5300
Fax: (970) 641-7696
Email: dbaumgarten@gunnisoncounty.org

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of March, 2012 a true and correct copy of the foregoing was placed in the United States mail, postage pre-paid, and addressed as follows:

Ruth E. Dolezal and Larry E. Dolezal
158 County Rd 771
Ohio City, CO 81237

Judith Ebaugh
P.O. Box 95
Pitkin, CO 81241

Jim Katheiser
23 County Rd 75
Parlin, CO 81239

Leon K. Oltmann
P.O. Box 45
Parlin, CO 81239

Claire St. John
1426 County Rd 46
Gunnison, CO 81230

Sara S. Swartz
103 County Rd 771
Ohio City, CO 81237

Robert J. Sciaroni
United States Postal Service
475 L'Enfant Plaza, S.W.
Washington, D.C. 20260-1137


Brenda Williams