

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

Before Commissioners:

Robert G. Taub, Acting Chairman;  
Tony Hammond, Vice Chairman;  
Mark Acton;  
Ruth Y. Goldway; and  
Nanci E. Langley

Careywood Post Office  
Careywood, Idaho

Docket No. A2015-2

ORDER DISMISSING APPEAL

(Issued May 27, 2015)

I. INTRODUCTION

On March 19, 2015, the Commission posted on its website an appeal pursuant to 39 U.S.C. § 404(d) of the Postal Service's decision to close the Careywood, Idaho Post Office.<sup>1</sup> The Petition is dismissed for lack of jurisdiction.

II. PROCEDURAL HISTORY

On March 19, 2015, the Commission established Docket No. A2015-2 to consider the appeal, designated a Public Representative, and directed the Postal Service to file its Administrative Record and any responsive pleadings.<sup>2</sup>

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<sup>1</sup> Letter to Acting Chairman Robert G. Taub, postmarked March 2, 2015, and signed by Marrion E. Newsam Banks (Petitioner) stating that she wishes to protest the closing of the Careywood, Idaho Post Office, Petition for Review Received from Marrion E. Newsam Banks, March 19, 2015 (Petition).

On March 24, 2015, Petitioner requested a suspension of closure of the Careywood Post Office until the Commission completes its review of this case or at least the post office should remain open for the 60-day comment period and the 30-day appeal period provided by Postal Service regulation.<sup>3</sup> On March 27, 2015, Petitioner filed an emergency request for injunctive relief and suspension of closure pending Commission review of the appeal.<sup>4</sup> Petitioner noted that a Postal Service official said the Postal Service did not have to follow their closure rules for a contract postal unit (CPU) and that workers showed up on March 27, 2015 to remove the mailboxes from the Careywood Post Office. *Id.* at 2. On March 31, 2015, the Postal Service responded in opposition to Petitioner's Emergency Request.<sup>5</sup>

On March 27, 2015, the Postal Service filed a motion to dismiss the appeal and responded to Petitioner's application for suspension.<sup>6</sup> No administrative record was filed. On April 1, 2015, Petitioner filed in opposition to the Postal Service's motion to dismiss.<sup>7</sup> The Public Representative also filed an answer in opposition to the Postal Service's motion to dismiss the appeal.<sup>8</sup>

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<sup>2</sup> Notice and Order Accepting Appeal and Establishing Procedural Schedule, March 19, 2015 (Order No. 2402); Notice and Order Designating Substitute Public Representative, March 27, 2015 (Order No. 2416).

<sup>3</sup> Letter to Acting Chairman Robert G. Taub, March 24, 2015 (Suspension Request).

<sup>4</sup> Petitioner's Emergency Request for Injunctive Relief and Suspension of Closure Pending Commission Review of this Appeal, March 27, 2015 (Emergency Request).

<sup>5</sup> United States Postal Service Response in Opposition to Petitioner's Emergency Request, March 31, 2015.

<sup>6</sup> United States Postal Service Motion to Dismiss Proceedings and Response in Opposition to Petitioner's Application for Suspension, March 27, 2015 (Motion and Response).

<sup>7</sup> Opposition to USPS Motion to Dismiss Appeal – A2015-2, April 1, 2015 (Petitioner Opposition).

<sup>8</sup> Public Representative's Opposition to the Postal Service's Motion to Dismiss, April 3, 2015 (PR Opposition).

The Commission has also continued to receive many letters from concerned residents of Careywood as well as the Postmaster of the Careywood CPU and from several Idaho elected officials<sup>9</sup> in support of Petitioner's appeal.

### III. BACKGROUND

Careywood is an unincorporated area located in Bonner County, Idaho.<sup>10</sup> On June 1, 1974, the Careywood, Idaho Post Office became a community post office (CPO). Motion and Response at 2. A CPO is:

[a] contract postal unit that provides service in a community where an independent Post Office has been discontinued. A CPO bears its community's name and ZIP Code as part of a recognized mailing address.<sup>11</sup>

On June 2, 2014, the contractor informed the Postal Service of an intention to terminate the contract effective August 1, 2014. An emergency fixed-term contract was then awarded in September, 2014 to Ms. Caroline Bartelt to operate the retail facility as a CPU.<sup>12</sup> On February 23, 2015, the Postal Service notified Ms. Bartelt that the emergency contract would not be renewed and that under the terms of the contract, it would expire on March 31, 2015. Motion and Response at 2. Customer notifications were posted and letters placed in Post Office Boxes on February 20 and 21, 2015,

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<sup>9</sup> See Letter and Petition from Senator Mike Crapo Regarding the Careywood, Idaho Post Office, March 25, 2015 (Senator Crapo Letter), with attached petition of nearly 500 signatures urging leaders to save the Careywood Post Office. See also Letter Received from the Bonner County Board of Commissioners Regarding the Careywood, Idaho Post Office, April 2, 2015 (Board of Commissioners Letter).

<sup>10</sup> An interactive mapping tool is available at [http://tigerweb.geo.census.gov/tigerwebmain/Files/bas15/tigerweb\\_bas15\\_incplace\\_id.html](http://tigerweb.geo.census.gov/tigerwebmain/Files/bas15/tigerweb_bas15_incplace_id.html).

<sup>11</sup> Publication 32, *Glossary of Postal Terms*, July, 2013, at 45 (available at <http://about.usps.com/publications/pub32.pdf>).

<sup>12</sup> A CPU differs in some ways from a CPO. A CPU is defined as, "A postal unit that is a subordinate unit within the service area of a main Post Office. It is usually located in a store or place of business and is operated by a contractor who accepts mail from the public, sells postage and supplies, and provides selected Special Services (e.g., Postal Money Order or Registered Mail). Also called contract branch, contract station, and community Post Office unit." Publication 32, *Glossary of Postal Terms*, July, 2013, at 49 (available at <http://about.usps.com/publications/pub32.pdf>).

about the pending expiration of the contract on March 31, 2015. *Id.* Customers were informed Post Office Box replacement service would be available at the Athol, Idaho Post Office, approximately 7 miles away and approximately a 7 minute drive from the Careywood, Idaho CPU. *Id.* If Careywood customers elect to maintain a Post Office Box at the Athol Post Office, their mailing addresses and Post Office Box fees will remain the same. *Id.* In addition to the Athol Post Office, retail services are available at nearby Bayview, Cocolalla, and Sagle Post Offices. *Id.* at 2-3, Exhibit 1.

Petitioner states that she received notice on February 20, 2015 through a flier in her Post Office Box that the Careywood Post Office would be closed effective March 31, 2015. Petition at 1. Petitioner's Post Office Box service would be relocated to the Athol Post Office, a location that petitioner states is 7.5 miles south in Kootenai County, Idaho. *Id.* Petitioner states that she has been assigned a rural route address of Athol, Idaho 83801 in Kootenai County. *Id.* at 2. Petitioner noted that a Postal Service official said the Postal Service did not have to follow their closure rules for a CPU and that workers showed up on March 27, 2015 to remove mailboxes from the Careywood Post Office. Emergency Request at 2.

#### IV. PARTICIPANT PLEADINGS

*Postal Service.* The Postal Service argues that the Commission's jurisdiction under 39 U.S.C. § 404(d)(5) "is limited to discontinuance of Postal Service operated "Post Offices" and does not apply to operations related to contractor-operated retail facilities, which are not owned or operated by the Postal Service." Motion and Response at 1. It claims that discontinuance occurs only from action directed toward a "Postal Service-operated retail facility." *Id.* at 3; fn.4. An appeal must concern a "closing" of a "post office." *Id.* Therefore, it claims, section 404(d) does not apply to Postal Service management of its contracts, or to the operation of a retail facility whose existence derives solely from the terms and conditions of a voluntary contract. *Id.* The Postal Service contends that the appeal is therefore not within the scope of the

Commission's jurisdiction because it requests review of a contract renewal decision governing operation of a CPU. *Id.* The Postal Service states that the Commission lacks subject matter jurisdiction and should dismiss the appeal. *Id.* at 1.

The Postal Service cites its regulations governing the discontinuance of a "Postal Service-operated facility" which explicitly exclude CPUs. *Id.* at 3.<sup>13</sup> Further, a "contractor-operated retail facility" is defined in the Postal Service regulations as excluding any retail facility operated by a Postal Service employee.<sup>14</sup> The Postal Service concludes that it had no obligation to follow the procedural requirements of 39 U.S.C. § 404(d) and 39 C.F.R. § 241.3 because the decision concerned a contract by which a third-party contractor offered retail services and the term "discontinuance" does not extend to operations at a CPU. *Id.* at 4.

The Postal Service also argues that the "sole source" standard enunciated by the Commission in *Knob Fork*<sup>15</sup> and discussed in the more recent *Alplaus*<sup>16</sup> decision does not apply to Careywood because Careywood postal customers are "served by nearby post offices and alternative methods of access." Motion and Response at 4. The Postal Service argues that, like the Alplaus Post Office, the Careywood Post Office "is not the 'only retail postal facility serving the community.'" *Id.* at 5. Athol Post Office is approximately 7 miles away, and according to Google Maps, approximately a 7 minute drive from the Careywood CPU. *Id.* at 2. Careywood Post Office customers are eligible for service by carrier delivery, which allows 24-hour access to their mail and a wide range of services available from the carrier. *Id.* at 5-6. The Postal Service notes that,

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<sup>13</sup> The cited regulations appear at 39 C.F.R. § 241.3(a)(2)(i). ("USPS-operated retail facility'...does not include any station, branch, community Post Office, or other retail facility operated by a contractor").

<sup>14</sup> 39 C.F.R. § 241.3(a)(2)(ii) ("Contractor-operated retail facility' includes any...community Post Office, or other facility, including a private business, offering retail postal services that is operated by a contractor, and does not include any USPS-operated retail facility").

<sup>15</sup> Docket No. A83-30, *In re Knob Fork, West Virginia* 26579, Commission Opinion Remanding Determination for Further Consideration 39 U.S.C. § 404 (b) (5), January 18, 1984 (*Knob Fork*).

<sup>16</sup> Docket No. A2012-88, Order No. 1293, Order Dismissing Appeal, March 21, 2012 (*Alplaus*).

since the *Knob Fork* decision, increased access to postal services include “traditional Post Offices, contract postal units, rural and highway carriers, Village Post Offices, Self-Service Kiosks, Approved Shippers, USPS.com and consignment stamp retailers.” *Id.*

The Postal Service also argues that Commission jurisdiction is “not compatible with the requirements of contract management, negotiation, and implementation.” *Id.* at 6. It says that “applying the section 404(d) procedures to CPU contract decisions would provide contractors with a bargaining advantage over the Post Office, and force the Postal Service to continue operating a contract even where sound business judgment supports termination.” *Id.* at 7.

In response to Petitioner’s request for suspension, the Postal Service contends that suspension is not available because there is no Final Determination for the Commission to suspend under section 404(d)(5). *Id.* Nor is suspension practical as it would “frustrate postal operational plans” consisting of numerous arrangements and would be costly. *Id.* at 7-8.

*Petitioner.* Petitioner states that closing the Careywood CPU “will have a disastrous and negative impact on Careywood and its residents” as the post office is the heart of their community. Petition at 1. The highway to Athol, U.S. Highway 95, can be treacherous, particularly in winter. *Id.* at 2. Post office boxes are kept by residents because rural mailboxes are susceptible to theft and road grader/snow plow assault. *Id.* Many residents do not have Internet access. *Id.* The Careywood CPU has improved since August 1, 2014 and is profitable with year-to-date sales increases. *Id.* at 2-3.

Petitioner responds to the claim that the Careywood Post Office is not the only retail postal facility serving her community. She asserts that Athol, Idaho is not her community and that Athol and Bayview, the alternative post offices suggested by the Postal Service, are not in the same county. Petitioner Opposition at 2. She also claims Careywood postal customers on rural routes rarely see their mail carriers unless there is a package to deliver. She states that it is impractical to wait around for a mail carrier to buy stamps. She notes that there are no automated postal centers in the area and the

nearest “approved shippers” or “retail establishments that sell stamps” that are not post offices are in towns 20-30 miles away. *Id.* at 3.

*Public Representative.* The Public Representative urges the Commission to deny the Postal Service’s motion to dismiss and remand the decision to close the Careywood, Idaho CPU. PR Opposition at 7. She advances three arguments: (1) the Careywood CPU is the sole source of postal services in the community; (2) it is in the public’s interest to have clear and transparent procedural rights when the Postal Service eliminates all postal services in a community; and (3) the holding in *Knob Fork* should be maintained to protect rural postal customers. *Id.* at 2-6.

The Public Representative asserts the Postal Service’s motion interprets the Commission’s authority in a manner inconsistent with longstanding precedent in *Knob Fork* where the Commission determined the right of appeal pursuant to section 404(d) is applicable to closing retail postal facilities when they are “the sole source of postal services to a community.” *Id.* at 2. She notes that while the Commission has continued to hold that section 404(d) applies to CPO and CPU closings when they are “the sole source of postal services to a community,” the Commission has found that where alternative post offices are within 1.5 miles, 1.7 miles and 1 mile, they “could not be considered the “sole source” of postal services qualifying for section 404(d) notice and procedural rights.”<sup>17</sup> She states that Careywood falls within the narrow *Knob Fork* exception. The alternative post office is approximately 7 miles away and not a viable alternative source of postal services. *Id.* at 3-4. Also, the appeal and comment letters indicate it is a distinct community and the post office is the heart of the community in operation for over one hundred years and the current facility has been in operation since 1933.<sup>18</sup> *Id.* at 3. She believes Careywood is a separate and distinct community from Athol with different emergency services and court services. *Id.* She concludes

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<sup>17</sup> *Id.* at 2-3. The Public Representative also points out that over half the nation’s CPUs are located less than 2 miles from the nearest post office; suggesting that in practice this limits the number of closed CPUs that would trigger Commission jurisdiction if closed or consolidated.

<sup>18</sup> See Senator Crapo Letter; see also Board of Commissioners Letter.

Careywood CPU is the “sole source” of postal services for the community and that the Commission has subject matter jurisdiction over the appeal. *Id.* at 4.

The Public Representative also contends the Postal Service ignores the realities of commercial contracting where notice and procedural requirements are standard in the event of a termination or dispute. *Id.* at 4-5. She states the Postal Service is not credible in arguing that it cannot accommodate the basic notice and procedural requirements of section 404(d). She argues the issue is whether the Postal Service should have complied with notice and procedural requirements and section 404(d) which requires the Postal Service to give the community the benefit of transparency and predictability when a post office is to be closed. *Id.* at 5.

Finally, the Public Representative believes that modifying *Knob Fork* to exclude CPUs that are the sole source of postal services to a community would have a disparate impact on rural communities. *Id.* at 6. She claims that a “key aim of Federal policy” is to increase opportunities and standards of living in rural areas, and that those areas do not enjoy the same access to postal service as their urban counterparts. *Id.* She indicates that the record on this appeal demonstrates that residents of Careywood have no other options. *Id.*

## V. COMMISSION ANALYSIS

The Commission’s remedial authority in post office closing or consolidation appeals is prescribed by the statute and is limited. Petitions appealing Postal Service actions and subsequent filings received by the Commission from interested persons regarding the closing of various Postal Service retail facilities often indicate there is a misunderstanding among the general public of the scope of Commission authority to review Postal Service decisions regarding the operation of its retail facilities. The Commission’s role is limited to the review of determinations by the Postal Service to close or consolidate post offices. 39 U.S.C. § 404(d)(5). In those cases where the Commission does have authority to review the administrative record affiliated with



Postal Service decisions to close or consolidate post office facilities, the Commission's role upon receipt of an appeal is specifically defined. That limited authority is expressed in the language of 39 U.S.C. § 404(d)(5), "The Commission may affirm the determination of the Postal Service or order that the entire matter be returned for further consideration, but the Commission may not modify the determination of the Postal Service. The Commission may suspend the effectiveness of the determination of the Postal Service until the final disposition of the appeal." In other words, when the Postal Service elects to close or consolidate a post office, the Commission may review the administrative record, but it cannot overturn or modify a post office closure or consolidation. Suggestions that the Commission can overturn or modify a Postal Service decision to close or consolidate a post office may set unrealistic expectations when the Commission by law cannot do so.

In the case of Careywood, as discussed further below, the Commission is not ruling on a motion to dismiss the appeal of a closing of a traditional post office, but rather it is ruling on a motion to dismiss the appeal of a CPU. This is an important distinction as the Commission, through over 30 years of precedent, has established that the Postal Service's decision to close or consolidate a CPU is only within the Commission's jurisdiction if the CPU is the sole source of postal services to the affected community.

This "sole source" test that the Commission has consistently used to determine its jurisdiction to hear an appeal of a Postal Service decision to close or consolidate a CPU is unique to non-Postal Service-operated contract offices like a CPU or CPO. This limitation on the Commission's jurisdiction to hear the appeal of a CPU or CPO does not affect the Commission's authority to hear appeals of the closure or consolidation of any of the nearly 32,000 Postal Service-operated retail facilities, including post offices, stations, and branches that may be located in rural, urban, or suburban areas throughout the nation. Moreover, it is not the same as the standard for whether a Postal Service decision to arrange retail offerings within a community is reviewable by the Commission, which is a different jurisdictional test that the Commission has applied to

stations and branches. See, e.g., Docket No. A2011-90, Order No. 1159, Order Dismissing Appeal, January 20, 2012, at 9-11. The discussion and analysis below set forth and apply the “sole source” test to the Careywood CPU.

*Applicable law.* The Commission stated in the *Green Mountain* opinion in Docket No. A94-9:

The closure of a Community Post Office and residents' interests and rights when a Community Post Office is closed have been an area of concern at the Rate Commission since the Knob Fork, WV, appeal in 1983.

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It is the view of the Commission that Congress expected the section 404(b) procedures to apply not only to independent post offices, as defined by the Postal Service, but also Community Post Offices when they are the sole source of postal services to a community.<sup>19</sup>

The Commission has consistently relied upon the “sole source” condition in reaching its decisions in *Knob Fork* and *Green Mountain* and more recently in *East Elko Station*<sup>20</sup> and *Alplaus*. The Commission continues to apply that framework in the instant appeal.

*Knob Fork*, *East Elko Station*, and *Alplaus* are the only Commission cases that discuss the elimination of a CPO or CPU serving a community.<sup>21</sup> Other cases that implicate the elimination of a CPO or CPU specifically involved either the closure of a

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<sup>19</sup> Docket No. A94-9, *In re Green Mountain, Iowa 50637*, Commission Opinion Affirming Decision Under 39 U.S.C. § 404(b), August 16, 1994, at 4-5 (*Green Mountain*).

<sup>20</sup> Docket No. A2010-3, Order No. 477, *East Elko Station, Elko, Nevada*, Order Dismissing Appeal, June 22, 2010 (*East Elko*). Docket No. A2007-1, *Ecorse MI 48229*, Order Dismissing Appeal on Jurisdictional Grounds, October 9, 2007 (Order No. 37). A station being closed was located 1.5 miles from a main post office so the procedural requirements of section 404(d) did not apply.

<sup>21</sup> Two other cases follow, without discussion, the *Knob Fork* determination that closing procedures for CPU/CPOs must be consistent with section 404(b). See Docket No. A84-5, *In re Foraker, Indiana 46525*, Commission Opinion Remanding Determination for Further Consideration 39 U.S.C. 404(b)(5), March 6, 1984. See also Docket No. A85-17, *In re Ranchita, California 92066*, Commission Opinion Remanding Determination for Further Consideration 39 U.S.C. 404(b)(5), June 12, 1985.

post office for consolidation into a CPO,<sup>22</sup> or a closure of a station or branch facility as part of a plan to realign services within the community. See Order No. 37.

In *Knob Fork*, the Commission applied discontinuance requirements of section 404(b)<sup>23</sup> because the community Post Office was the “only retail postal facility serving the community.” See *Knob Fork* at 1. The *East Elko Station* appeal was dismissed by the Commission where the station being closed was in close proximity, 1.5 miles away, from a post office where Post Office Boxes were available and other retail services might be obtained. *East Elko* at 7. In *Alplaus*, the availability of a nearby post office approximately 1 mile away (about 5 minutes driving time) and numerous other retail service options led the Commission to conclude the Alplaus CPO could not be considered the sole source of postal service for *Alplaus* residents. *Alplaus* at 6.

*Services offered to Careywood customers.* The Postal Service is offering Careywood CPU customers regular service by rural carrier delivery. Motion and Response at 6.<sup>24</sup> Retail postal services, including replacement Post Office Boxes, for Careywood CPU customers are available at the Athol Post Office, located approximately 7 miles south of Careywood and approximately a 7 minute drive on the main U.S. Highway 95. If Careywood customers elect to maintain a Post Office Box at the Athol Post Office, their mailing address and Post Office Box fees will remain the same. *Id.* Services are also available through [www.usps.com](http://www.usps.com). *Id.* at 2-3, 5-6, Exhibit 1;

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<sup>22</sup> *Green Mountain*; Docket No. A94-1, *In re Waka, Texas 79093*, Commission Opinion Affirming Decision Under 39 U.S.C. § 404 (b), February 4, 1994 (Waka); Docket No. A94-3, *In re Inavale, Nebraska 68952*, Commission Opinion Affirming Decision Under 39 U.S.C. § 404 (b), March 15, 1994 (Nebraska); Docket No. A94-8, *In re Benedict, Minnesota 56436*, Commission Opinion Remanding Decision Under 39 U.S.C. § 404 (b), August 3, 1994 (Minnesota).

<sup>23</sup> The Postal Accountability and Enhancement Act (PAEA) redesignated 39 U.S.C. § 404(b) as 39 U.S.C. § 404(d). PAEA § 1010(e).

<sup>24</sup> One comment letter states “the rural carriers do not deliver packages, so my packages would be left at Athol.” Letter from Sheila Falconer, Letters from Concerned Citizens Regarding the Careywood, Idaho Post Office, March 30, 2015, at 1. The Postal Service must, of course, provide delivery service to the area that complies with all Postal Service delivery policies.

Opposition at 2. Postal services are also available in Cocolalla, 8.2 miles away, Sagle, 12.6 miles away, and Bayview, 5.5 miles away. Motion and Response, Exhibit 1.<sup>25</sup>

*Application of the sole source of services within the community standard.* In the instant proceeding, both Petitioner and the Public Representative address the “sole source” condition expressed in *Green Mountain* and *Alplaus*. The Commission applies the sole source framework using a reasonable standard. The sole source standard is not simply whether a facility is the only postal retail service facility located in a community. The standard is whether that retail facility is the sole provider of services to a community. This standard allows the Commission to recognize ongoing developments in travel, communications, and other services impacting a community.

Congress envisioned the changing nature of access to retail options in section 302 of the PAEA that mandates a Postal Service Plan, which among other things, includes plans to expand alternate retail options to postal services including the Internet and non-post office access channels. See PAEA sections 302(d)(2), 302(d)(8) (uncodified).

A facility that may 30 years previous have been considered the only provider of postal services to a community could now, through the development of improved road safety, provision of services via the Internet or rural carrier, and the migration of business services to different area hubs, no longer be considered the “sole source” of postal services to that community.

In the case of Careywood, while approved shippers, contract units such as village post offices, and automated postal centers may not be currently available to many postal customers, other categories, such as another postal retail facility approximately a 7 minute drive away, rural carriers, *www.usps.com*, and the Internet, are available. In some cases, alternatives for the provision of postal services may not

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<sup>25</sup> The distances reported are from *www.usps.com* and are not driving distances, but rather straight line distance. In this case, compared to driving distances, these distances vary (are less than the comparable driving distance) by approximately 0.2 miles to 1.1 miles.

be as convenient as the Careywood CPU. However, the Commission's review focuses on whether the Careywood CPU is the sole source of postal services to the community, not whether it is the most convenient or desirable source of postal services.

In 2012 the Commission dismissed the *Alplaus* appeal upon finding alternative sources of postal services were available from another post office approximately 1 mile away (5 minutes driving time), 20 other alternate access options within 5 miles, the Internet, and *www.usps.com*. *Alplaus* at 6.

Careywood is a community and remains a community notwithstanding the fact that businesses in adjacent communities provide the commercial goods and services to the residents of Careywood. After the CPU is closed, Careywood residents would need to drive approximately 7 minutes, 2 minutes more than the residents of Alplaus to access the next closest retail facility. See Motion and Response at 2, Alplaus at 6. The Commission concludes that the Careywood CPU is not the sole source of postal services to the community of Careywood.

As the Commission concluded in *Knob Fork*, the section 404(b) procedures were intended to apply to the closure of community post offices when they are the sole source of postal services to a community. On the facts presented here, the Commission cannot reasonably characterize the Careywood CPU as the sole source of postal services or retail postal services available to Careywood community residents.

Because the Postal Service is not eliminating the sole source of retail postal services to the Careywood community (*see Knob Fork*), there is no basis to remand the matter to require the Postal Service to follow the 404(d) closing procedures.

The Commission, however, urges the Postal Service to make every effort to provide timely notice and to obtain thoughtful comments from customers before determining to close CPOs or CPUs. As the comments in this proceeding suggest, local issues relating to distances to be travelled, the availability and safety of parking at expanding facilities, special needs of home businesses, the potential impact on postal

service revenues, and the quality of service at the CPO or CPU and at alternative post office facilities can be discerned, considered and perhaps resolved in reaching a determination whether to close a facility. This appeal is dismissed.

*Initiation of proceeding to consider Commission policy and rules regarding closure of CPOs and CPUs.* The distinctions the Commission has drawn for more than 30 years in considering appeals filed under section 404(d) to review closings of CPOs and CPUs have worked reasonably well to protect the interests of all stakeholders. Commission review has been limited to those cases where the retail facility is the sole source of postal services in the community. Nevertheless, questions have arisen in this proceeding about application of the Commission's precedents and its policy for review of the closing of CPOs and CPUs as to whether the facilities to be closed may be the sole source of retail services in the community. Rather than addressing these issues further in the instant proceeding, which necessarily is limited to the current parties, the Commission will initiate a separate proceeding to review the scope of its legislative authority under section 404(d) to consider Postal Service actions involving the closing of a retail facility.<sup>26</sup>

Revisiting these issues in a single proceeding will best serve the interests of all stakeholders as well as judicial economy.

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<sup>26</sup> Previously the Commission deferred consideration of a definition of the term "relocation." See Docket No. RM2011-13, Order No. 1171, Order Adopting Final Rules Regarding Appeals of Postal Service Determinations to Close or Consolidate Post Offices, January 25, 2012, at 8. See *also* Docket No. A2013-5, Order No. 1866, Order Affirming Determination, October 31, 2013, at 12.

*It is ordered:*

The United States Postal Service Motion to Dismiss Proceedings, dated March 27, 2015, is granted.

By the Commission.

Shoshana M. Grove  
Secretary

Commissioner Goldway dissenting.

### SUPPLEMENTAL VIEWS BY COMMISSIONER LANGLEY

I concur with my colleagues that through section 302 of the Postal Accountability and Enhancement Act (PAEA), Congress envisioned the changing nature of access to retail options. However, Congress also required postal policy to ensure that residents of both urban and rural communities receive effective postal services and that “[t]he 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.” See 39 U.S.C. § 101(b). Determining the “maximum degree of effective and regular postal services” to these communities is critical. For this reason, I support initiating a proceeding to consider Commission policy and rules regarding closure of community post offices and contract postal units.

Nanci E. Langley



## DISSENTING OPINION OF COMMISSIONER RUTH Y. GOLDWAY

I disagree with the majority opinion's summary dismissal of this post office closing appeal and with the reasons given for the dismissal. The majority opinion begins its analysis by describing the limited scope of Commission authority with regard to post office closing appeals. It omits the fact that there is longstanding precedent for the Postal Service to keep open any post office that is under appeal until the conclusion of the case and further, that on the rare occasions when a decision to close has been remanded by the Commission, for the Postal Service to be diligent in performing the thorough review it had not done earlier and, almost always, to allow that the post office to remain open in the interim.

In other words, the role of the Commission in reviews of post office closing appeals is important and works to assure that citizens' due process rights and rights to post office service are protected. In the matter of Careywood, the majority opinion is not offering to give the community due process or protection to the extent the Commission is able under current law. Moreover, precedent established in this case would significantly lessen the Commission's ability to review post office closings in rural communities, thereby removing important protections for rural Americans.

A key aspect of the Commission's jurisdiction is whether the Careywood Contract Post Unit (CPU) is the only retail postal facility serving the Careywood, Idaho community. Because the members of the community have a well-founded belief that the Careywood CPU is the community's sole retail postal facility, the Commission should hear the case.

*Legal Precedent.* The Commission has longstanding precedent (*Knob Fork* and the line of appeal cases derived from that decision)<sup>1</sup> that the closure or consolidation of

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<sup>1</sup> Docket No. A83-30, *In re Knob Fork, West Virginia*, Commission Opinion. Remanding Determination for Further Consideration — 39 U.S.C. § 404(b)(5), January 18, 1984. *Knob Fork's* progeny contains similar legal holdings and reasoning. See, e.g., Docket No. A94-1, *In re Waka, Texas*, Commission Opinion Affirming Decision Under 39 U.S.C. § 404(b), February 4, 1994, at 5-6; Docket No. A94-3, *In re Inavale, Nebraska*, Commission Opinion Affirming Decision Under 39 U.S.C. § 404(b),

a CPU or Community Post Office (CPO) is reviewed by the Commission under the post office closing appeal provisions of 39 U.S.C. § 404(d), where the office is the only retail facility serving a community. This is a fundamental responsibility of the Commission. There are two tests: (1) the adequacy of service to be offered; and (2) the uniqueness of the community to be served.

I do not suggest rigid adherence to the holding in the *Knob Fork* line of cases. Postal patrons in some parts of the United States have access to alternative channels of postal services. However, in Careywood, postal patrons have no such access.

The service options offered after the closure of the CPU in Careywood are so limited, as to be not at all comparable to regular service, and are neither close nor convenient. Residents of Careywood do not have access to Village Post Offices, centralized delivery boxes, automated postal centers, or approved shippers, nor is there any indication by the Postal Service that such services will be added in the foreseeable future. The Commission has received many comments and letters that describe the disadvantages to some customers of accepting either a Post Office Box at the Athol Post Office or else rural delivery service. The paucity of local alternatives is magnified by the challenge of travelling to the Athol Post Office in winter due to seasonal road

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March 15, 1994, at 5 (“The statute intends that, when the Postal Service is planning to close the only retail facility serving a community, the people living in that community have” the protections of § 404(b)); Docket No. A94-8, *In re Benedict, Minnesota*, Commission Opinion Remanding Decision Under 39 U.S.C. § 404(b), August 3, 1994, at 7-8; Docket No. A84-5, *In re Foraker, Indiana 46525*, Commission Opinion Remanding Determination for Further Consideration 39 U.S.C. 404(b)(5) (March 6, 1984); Docket No. A85-17, *In re Ranchita, California 92066*, Commission Opinion Remanding Determination for Further Consideration 39 U.S.C. 404(b)(5), June 12, 1985. See also Docket No. A94-9, *In re Green Mountain, Iowa 50637*, Commission Opinion Affirming Decision Under 39 U.S.C. § 404(b), August 16, 1994; Docket No. A2006-1, *Observatory Finance Station, Order Denying Postal Service Motion to Dismiss and Remanding for Further Consideration*, September 29, 2006, at 10-11. (Section 404(b) was renumbered as § 404(d) by the Postal Accountability and Enhancement Act in 2006.)

The Commission has further stated, discussing the *Knob Fork* precedent, that the protections of Section 404(d) are not limited solely to the “closing of the sole postal retail facility serving a community”. Docket No. RM2011-13, Order No. 814, *Notice of Proposed Rulemaking Regarding Appeals of Postal Service Determinations to Close or Consolidate Post Offices*, August 18, 2011, at 11.

conditions, which commenters suggest can increase both travel burden and travel time. Athol is also located in a different county than Careywood.

More than one commenter mentioned the lack of security for pick-up and delivery of important items at an unattended, unlocked rural route box, often far from their residence. There is no evidence the Postal Service has evaluated the availability of nearby structures suitable for centralized box delivery or other secure manner of delivery. Reliance on carrier delivery as a substitute for accessible retail postal service is misplaced; commenters noted that in this community their mailboxes are distant from their homes, reducing the security and practicality of transactions assisted by rural carriers. The fact that some communities find substitution of rural delivery less useful than others is acknowledged in Postal Service post office closing procedures that poll a community for its preference regarding rural delivery service as an alternative to a post office.

The majority opinion also bases its decision on the as yet undocumented availability of internet service and of the Postal Service website USPS.com to residents of Careywood. The opinion seems to be establishing a precedent – contrary to current law – that internet service along with rural delivery is the new standard for adequate rural postal service and that no rural community would need to be served by a post office. If the availability of internet service along with rural delivery is enough to preclude having a post office, then it is hard to see why any community would need a post office.

In evaluating service, the majority opinion offers that the community should now be interpreted as a much broader surrounding region, including retail locations several miles distant from Careywood. This new and untested criterion is presented without the benefit of a full factual record and lacking the administrative paperwork that is required to document the basis of the Postal Service's closure decision.

If the Commission aims to establish a new service framework for decisions regarding rural post office appeals, and therefore new corresponding precedents, it

should only do so on the basis of a full record, not on a motion to dismiss. By adopting a new interpretation and test for jurisdiction over section 404(d) appeals of the closure of a CPU or CPO in a motion to dismiss, the majority opinion disregards *stare decisis*, a core principle of legal decision-making that contributes to continuity, predictability and fairness.

*Community.* The majority opinion acknowledges that Careywood is a separate community. But it then proceeds to adopt the notion that eliminating the Careywood post office and directing postal patrons to another entirely separate community is merely a relocation within the community.

It is premature to conclude that the relocation of the point of service is within the community when the facts of what encompasses a community are in dispute – even within the majority’s opinion. The majority opinion makes contradictory assertions: Careywood is a distinct community, thereby acknowledging the existence of the many commenters, but is not a separate community and rather encompasses an expansive geographical area, thus accepting the Postal Service’s argument without a full proceeding.

The majority opinion states that “relocations of postal retail facilities within the community, do not constitute a closure or consolidation of a post office and fall outside the Commission’s jurisdiction.” *Supra* at 9. However, it provides no evidence to support the determination that the closure of Careywood’s retail postal facility is simply a relocation within the community and provides no opportunity to gather such factual information. To the contrary, the comments received by the Commission from the community note the disruptions and difficulties from uprooting the point of service and moving it to Athol and the lack of alternative service options offered.

It is unwarranted for the majority opinion at this point in the proceedings to conclude that a “community” encompasses a geographic area much broader than the commonly understood description of the term. While residents may venture out to other towns to buy groceries, supplies, and gasoline, such errands may not be as frequent as

the need to receive or send mail, or conduct time-sensitive postal transactions, particularly for those who rely more heavily on the mail, such as small businesses or senior citizens in Careywood. Seasonal weather and road conditions further complicate the issue. It is nonsensical to think that the community will continue to receive postal service that is comparable to national norms.

The Public Representative correctly notes that the appeal, letters and the petitions filed with the Commission clearly support the proposition that Careywood is a separate and distinct community, and the closure of the Careywood CPU eliminates the sole source of postal services in that community.<sup>2</sup> The Public Representative further notes that these documents demonstrate that the community views the Athol Post Office as being located in a different community, within a different county, and with distinct emergency and court services. *Id.* Comments from federal and local elected officials support the citizen concerns.

I would argue that the facts available to the Commission thus far indicate that this is a clear example of “the closing of the only retail facility serving a community” clearly described in the Commission’s *Knob Fork* post office appeal decision and at least four subsequent Commission opinions adhering to the *Knob Fork* precedent.

I disagree with reliance on the *Alplaus* case in support of dismissal. The Commission’s decision in the *Alplaus* post office appeal case is readily distinguishable from the facts in Careywood. In *Alplaus*, the Commission dismissed the appeal of a CPO where a substitute post office location was only 1.1 driving miles from the CPO to be closed, and a second post office location was 2.5 driving miles away.<sup>3</sup> In the case of Careywood, the designated substitute post office (Athol) is 6.9 driving miles away, while others cited by the Postal Service, Bayview, Cocolalla and Sagle are, respectively, 6.6, 8.4 and 13.2 driving miles away. The distances cited in the majority opinion are lesser

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<sup>2</sup> Public Representative’s Opposition to the Postal Service’s Motion to Dismiss, April 3, 2015, at 3 (PR Opposition).

<sup>3</sup> Source: Google Maps driving distance from the Careywood CPU to the respective address of each of the post offices cited.

figures submitted by the Postal Service in its Motion to Dismiss, which are, based on publicly available information, understated.

*Inadequate Record.* Several important factual matters remain unclear without the submission of the Postal Service's Administrative Record (or the equivalent documents associated with the closure of a CPU/CPO) to provide an objective basis by which the Commission may properly judge the matter. These open questions include whether the Postal Service considered the effect of such closing or consolidation on the community, and whether the closing or consolidation is consistent with the policy, articulated in Section 101(b), 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.<sup>4</sup>

The record suggests that the Postal Service failed to provide adequate notice and an opportunity for input from the community served by a retail postal facility. In this case, the facility is a retail postal facility which had replaced Careywood's independent post office in 1974.<sup>5</sup>

While the continued existence of a CPO or CPU does depend upon a business agreement between the Postal Service and a contractor, that contractual relationship does not eviscerate the fundamental stakeholder interests of the members of the community served by that postal unit, interests explicitly recognized under the statutory provisions of title 39. Although they are not signatories to the contract, the members of the community nevertheless deserve to have an opportunity to articulate and communicate their concerns and preferences regarding the elimination of retail service in their vicinity, and to have the Postal Service review their concerns in good faith.

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<sup>4</sup> See 39 U.S.C. § 404(d)(2), (citing 39 U.S.C. 101(b)).

<sup>5</sup> The Postal Service says the office has been a CPU since an emergency contract renewal in September 2014, and prior to that it was a Community Post Office. See United States Postal Service Motion to Dismiss Proceedings and Response in Opposition to Petitioner's Application for Suspension, March 27, 2015, at 1-2.

The record before the Commission provides no evidence that the Postal Service communicated adequately with the community or with elected officials regarding this closure. In such cases, the Commission should undertake its responsibility to carefully review petitions that the closing did not satisfy title 39.

Title 39, Section 101(b) reads: “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.” The majority opinion decision to dismiss this appeal before the facts are considered does not reflect that statutory obligation.

I agree with the Public Representative’s conclusion that “[t]he statutory procedural rights in Section 404(d) are important to the public’s interest. Section 404(d) does not require the Postal Service to keep a post office open in perpetuity, but rather requires that the Postal Service comply with a process that benefits the community by providing transparency and predictability when a post office is to be closed. This is the role and intent of the statute.” PR Opposition at 5.

The Commission should deny the motion to dismiss so that a complete, rather than cursory, factual evaluation can be made as to the core question: whether the Careywood CPU is the only retail facility serving the community, and if so, whether the Postal Service followed its own procedures for closing this facility.

This post office closing appeal should be heard. Dismissing the appeal forecloses the community’s only opportunity to be heard regarding the abrogation of their postal service, and exacerbates the ill effects of the Postal Service’s preemptory and disengaged process imposed upon this community.

The majority decision here – despite the promise of a new general proceeding in which it will be challenging for average citizens to participate – in fact establishes an unreasonable precedent that mere access to the internet and USPS.com are adequate

substitutes for post offices in any rural community. No rural post office would qualify as a sole source under this untested and probably illegal standard. Such a decision contradicts the legal obligations the Commission has to protect rural postal service and to ensure that the Postal Service provides adequate procedural reviews and citizen engagement before closing a post office. Commenters here have raised serious *bona fide* concerns about the adequacy of Postal Service due process.

It will be difficult for the Commission to continue to encourage the Postal Service to meet its obligations to the rural public when the Commission declines to hear credible and legitimate citizen appeals. If, after giving Careywood the opportunity to be heard, the Commission still believes that the closing does not fit within its jurisdiction, a decision to deny the appeal would at least have some substance and meaning.

I disagree with the majority opinion's disavowal of the Commission's statutory responsibilities and the interests of the community in this proceeding.

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