

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

Before Commissioners: Robert G. Taub, Acting Chairman;
Mark Acton;
Tony Hammond; and
Nanci E. Langley

Public Inquiry Concerning the Docket No. PI2016-2
Terms of 39 U.S.C. 404(d)

INITIAL COMMENTS OF STEVE HUTKINS ON THE
COMMISSION'S JURISDICTION OVER POST OFFICE CLOSINGS

(February 4, 2016)

To most patrons of the post office, the questions being examined in this docket — “what, in commenters’ view, constitutes a relocation or rearrangement of postal services and is thus exempt from Commission review pursuant to section 404(d); and when or if the Commission should have jurisdiction to review the closing or consolidation of a contract postal unit (CPU)”¹ — may seem like technical matters of little importance. When the Postal Service decides to close the post office, however, and members of the community appeal to the Commission, these issues turn out to be very significant. They determine whether the Commission will hear the appeal or simply dismiss it.

¹ Order No. 2862, Docket No. PI2016-2, Notice and Order Seeking Comments on Commission Jurisdiction over Postal Service Determinations to Close or Consolidate Post Offices (December 10, 2015).

If post office closings and appeals appear to be low priority for Congress and industry stakeholders these days, it's for a simple reason. As the Postal Service notes in its past two Annual Compliance Reports to the Commission, in FY 2014 or FY 2015 no post offices, stations, or branches were closed,² and as a result the Commission has not been hearing appeals. But post office closures will eventually resume, and so will appeals. It is therefore important to address the questions that were left unresolved when the appeals slowed down, particularly those raised by *Glenoaks*³ and *Careywood*.⁴

The Commission's jurisdiction over appeals is no small matter, and this docket merits close scrutiny. I have been following post office appeals for nearly five years now, writing about them for the savethepostoffice.com website, and contributing comments to the Commission on a few key cases, like *Glenoaks*, *Careywood*, and the *Bronx*.⁵ I have tried to present the viewpoint of average consumers, who have nothing like the associations of mailers to represent their interests. Notwithstanding the role of the Public Representative, this situation presents challenges for the public's interests to be articulated and heard.

² This does not appear to be quite correct. The Postal Service closed the Glenoaks Station in December 2013. The closure does not appear in Postal Bulletin, even though discontinuances are generally recorded in the Bulletin. The Postal Service also closed the Careywood Community Post Office in March 2015, but the Postal Service does not consider contract post offices to be "post offices."

³ Docket No. A2013-5, Glenoaks Station Post Office, Burbank, California, Order Affirming Determination, October 31, 2013 (Order No. 1866).

⁴ Docket No. A2015-2, Careywood Post Office, Careywood, Idaho, Order Dismissing Appeal, May 27, 2015 (Order No. 2505).

⁵ Docket No. A2013-6, Bronx General Post Office, New York, NY.

While the Commission hears regularly from the major stakeholders in the mailing industry, about the only time it hears from the average person is when a post office closure is appealed. In order to be responsive to *all* users of the mail, it is extremely valuable for the Commission to hear appeals on post office closings when they arise. Even if the appeal fails to win a remand decision, it is the availability of due process that is important.

My concern with this docket is that the Commission is bent on interpreting 39 U.S.C. 404(d) in ways that will narrow its own jurisdiction over appeals. As a result, more and more cases will be dismissed, communities will feel that their concerns were not heard, and the public will come to feel that the role of the Commission in such matters is irrelevant. Instead of serving as a safety valve in the system and a check on errors committed by the Postal Service in its administrative process — one of the main goals envisioned by the writers of Section 404 — the Commission will be perceived as useless in the only situation in which it typically engages with the public.

As noted in the Order initiating this docket, the Commission has limited powers with respect to appeals. It cannot reverse a determination by the Postal Service to close a post office and can only remand the order back to the Postal Service for further consideration. Nonetheless, the Commission should not denigrate the significance of its authority in these matters. Appeals require the Postal Service to produce the Administrative Record, which guarantees at least some degree of transparency, and they give a community the opportunity to be heard. Whatever the Commission's ultimate decision on an individual case, the

existence of some rights of appeal obliges the Postal Service to take due care with its important responsibility of providing postal service to every community and to all parts of the Nation.

The following comments discuss the key terms at issue in this docket, review some of the main cases, and offer a few suggestions. The recurring theme is simply this: The Commission should not look for ways to narrow its jurisdiction over appeals.

1. Narrowing the Commission's jurisdiction over appeals undermines the discontinuance process.

Appeals are valuable not simply because they give a community the right to be heard; they also help ensure that the Postal Service has followed the requirements of the statute and regulations governing discontinuances. If the Postal Service has reason to believe the Commission will dismiss an appeal, it will be less compelled to exercise due care in closing post offices and could proceed with reduced regard for the niceties of procedural requirements. The Postal Service would not even need to inform customers that they have the right to appeal (as is currently the case with stations and branches and contract units). If anyone did appeal, the Postal Service — or the Commission — could claim that the closing was “merely a rearrangement” of postal services in the community or that the situation did not pass the “sole source” test.

With these definitional changes, large numbers of post offices could be closed with no reason for the Postal Service to follow the discontinuance

procedures or for the Commission to hear appeals. With access to USPS.com (“the world’s largest post office”⁶), a letter carrier serving as a “post office on wheels,”⁷ and tens of thousands of stores selling stamps on consignment, what post office could *ever* meet the “sole source” standard? What criteria would *exclude* a post office closing from the “rearrangement” category? Would any post office whatsoever be outside the scope of such formulations?

If the Commission follows the route outlined in the Order initiating this docket, it will not only limit its own jurisdiction. It will also limit the jurisdiction for future Commissions. It will tie their hands and make it nearly impossible, or at least procedurally awkward, to hear an appeal — even in cases where the facts are compelling and the Commissioners are inclined to do so.

Given that appealing a post office closing is a basic right guaranteed by 404(d), the Commission should take the broadest interpretation of the statute that is reasonably legitimate. The Commission should not presume to take on the roles of Congress or the courts to narrow this right. If Congress wishes to clarify or narrow the statute or the courts do so under their jurisdiction, so be it. However, until that happens, the Commission should do all it can to protect the right of appeal as stated in the statute.

Rather than focusing on how to narrow its jurisdiction over appeals, the Commission might better serve the public interest if it addressed some of the

⁶“World’s Largest Post Office Does More Business Than Post Offices in Top Five Media Markets Combined” (December 08, 2015) https://about.usps.com/news/national-releases/2015/pr15_066.htm

⁷ Advisory Opinion on Retail Access Optimization Initiative, Docket No. 2011-1, December 23, 2011, at 109.

serious problems that manifested themselves during 2011 and 2012, when over two hundred appeals were filed. For example, during one stretch in 2011 and 2012, the Commission issued 130 orders affirming the Postal Service's decision to discontinue with a tie vote, two to two. That the Commissioners could be consistently divided like this suggests that they disagreed not over the details of each appeal but about something more fundamental.

In many cases, it seemed that the Postal Service was being unresponsive to the Administrative Record. As required by 404(d), the Postal Service always "considered" the effects of a closure on the community and employees, as well as conducting a financial analysis, but it often did so in a perfunctory way, with little sign of taking these considerations seriously enough to entertain the possibility of not closing the post office. In most cases, the Commission nonetheless found that the Postal Service had fulfilled its legal obligations because it had "considered" the necessary factors.

It became nearly impossible to win a remand decision, and the percentage of cases that merited a remand was significantly lower than in previous years.⁸ After the number of appeals subsided in 2012, the Commission ended up dismissing the last few appeals that were filed. Of the thirteen appeals on which the Commission has issued orders since January 2013, ten have been

⁸ From 1976 to 2010, about 291 appeals were filed, and 21 percent (62) ended with a remand. During January 1, 2011, to May 3, 2012, of the 220 appeals that were filed, only 7 percent (16) ended with a remand order. A list of these 2011-2012 appeals can be found here: <https://goo.gl/lhts5N>. For more about the numbers, see "Avalanche averted: Postal Service backs off plan to close thousands of post offices," savethepostoffice.com, May 9, 2012.

dismissed.⁹ Whatever the merits of these decisions, they seem to have set the direction for the future. Rather than hearing appeals, the Commission will dismiss them.

2. Patrons of *all* retail postal facilities should be provided with the same opportunity to appeal a closing.

For many years now, the Postal Service and the Commission have argued about the scope of 39 USC 404(d) and the Commission's jurisdiction to hear appeals. The Postal Service has taken a narrow view, arguing that stations and branches and contractor-operated community post offices are not "post offices" under 404(d), and appeals on closing them are outside the Commission's jurisdiction. The Commission, on the other hand, has consistently maintained that all of these facilities are "post offices" covered by 404(d) and that the closure of any of them, regardless of the type of office, can be appealed.

Now the Commission appears prepared to reverse its long-held positions on these matters. Rather than pushing back against the Postal Service's efforts to narrow its jurisdiction, the Commission itself is taking the initiative in doing so. Under the rubrics "rearrangement" and "realignment" and "sole source," the Commission is laying the groundwork for dismissing countless future appeals and

⁹ Two of the appeals were dismissed because they were filed late (one didn't even merit a formal "dismiss" order), four because they involved "emergency suspensions," two because they involved contract units that didn't meet the "sole source standard," and two because they were "relocations." In *Glenoaks*, the Postal service and Public Representative argued that it too should be dismissed because it was part of a "rearrangement," and the Commission affirmed the Final Determination even though the Postal Service had never even filed a brief responding to the substance of the appeal.

relieving the Postal Service of its obligation to do a proper discontinuance study. Given the inherent ambiguity of such terms, every station and branch and contract unit could be closed without appeal, and perhaps independent post offices as well.

It would be useful if the Commissioners looked back to its Advisory Opinion on the Station and Branch Optimization and Consolidation initiative, where it replied to the Postal Service's arguments that stations and branches were not "post offices" within the scope of 404(d). After reviewing the Postal Service's case, the Commission wrote the following:

The essential issue in this docket is whether patrons of all retail postal facilities should be able to appeal a closing or consolidation to assure that the Postal Service's own process was properly followed. On sound public policy grounds alone, the Commission finds that the record supports treating customers of stations, branches, and Post Offices the same, at least for the purpose of ensuring that the Postal Service follows its own policies and procedures.

Congress did not authorize the Commission to review the merits of Postal Service management decisions to close retail facilities. However, Congress did establish a process for patrons to appeal to the Commission to assure that the Postal Service follows established procedures. The Postal Service recognizes that postal patrons can not distinguish between Post Offices, classified stations, and classified branches. The closing of a Postal Service operated retail facility has substantially the same effect on patrons regardless of how the Postal Service might classify the facility. Thus, the Commission concludes that patrons of all retail Postal Service facilities should be provided with the same opportunity to assure that established procedures are adhered to, whether or not it is required by statute.

The Commission finds that patrons of Post Offices, classified stations, and classified branches equally should be advised that they may appeal whether Postal Service determinations to close or consolidate a facility

were made in accordance with established procedure. The Commission already believes it is required to accept such appeals.¹⁰

The Commission was very clear about the issue. Patrons cannot distinguish between the various types of post office, and they do not know or care about the Postal Service's arcane distinctions between "post office" and "stations," "branches," and "contract postal units." If the purpose of postal facilities is to provide service to the public, these internal designations and taxonomies carry little meaning for actions that directly affect the way the Postal Service interacts with the public. Closing a facility has the same effect, regardless of how it is classified. The Postal Service should therefore go through a uniform process to discontinue any one of these facilities, and *all* patrons should be advised that they have the right to appeal to the Commission.

This is not just a legal matter. As the Commission stated, it is also a matter of "sound public policy." The country is not well served when members of a community take enough interest in their post office to file an appeal only to have the appeal dismissed on technical grounds. If the Commission refuses to hear an appeal, the Postal Service is not required to produce the Administrative Record for review, there is no way to ensure sure that the Postal Service followed the appropriate laws and regulations, and the patrons of the post office will inevitably feel, in the words of 39 U.S.C. 404, that the post office was closed in an "arbitrary,

¹⁰ Advisory Opinion Concerning the Process for Evaluating Closing Stations and Branches, Station and Branch Optimization and Consolidation initiative, Docket No. 2009-1, March 10, 2010.

capricious” manner and for reasons “unsupported by substantial evidence on the record.”

Expanding the scope of the “rearrangement” rationale to dismiss appeals would have much the same effect as accepting the Postal Service’s arguments that stations and branches are not post offices under 404(d). After years of maintaining that stations and branches do fall within the scope of 404(d), the Commission would be capitulating by presenting another way to exclude stations and branches from 404(d). Worse, the “rearrangement” argument could also encompass other post offices as well. Now that 13,000 small post offices have been downgraded to Remotely Managed Post Offices (RMPOs) under POSTPlan, they have in effect been reduced to subordinate status like stations and branches. It is not hard to imagine closing any of these RMPOs using the “rearrangement” and “realignment” rationale. What closure could *not* be described in these vague terms?

The Commission may be inclined to give the Postal Service a substantial degree of flexibility to cut costs by reducing the number of brick-and-mortar post offices. But it is not up to the Commission to help the Postal Service close post offices, and that is not what this docket should be doing. No one is arguing that the Commission should substitute its judgment for that of the Postal Service concerning when a post office should be closed or how postal services should be provided. At issue are simply how closures are conducted by the Postal Service and whether such closures may be reviewed by the Commission.

If the Postal Service wants to challenge the Commission for taking too expansive a view of its jurisdiction, the Postal Service can petition the court for review. There is absolutely no reason, however, for the Commission to preemptively circumscribe its own jurisdiction. The Commission should maintain its long-held position that *all* post offices, including stations, branches, and contract units, are subject to 404(d).

3. Using the “realignment” and “rearrangement” rationale to dismiss appeals negates the manifest purpose of 404(d), renders the due process guarantees of this section nugatory, and writes “discontinuance” out of Section 404 of the Postal Reorganization Act.

In its Order initiating this docket, the Commission states that it wants to clarify the “the distinctions between closures or consolidations and relocations or rearrangements,” and the Order repeatedly refers to the phrase “relocations” and “rearrangements” in such a way as to suggest that the terms are interchangeable. They are not. The key distinction that needs to be made is not between “closures or consolidations” on the one hand and “relocations or rearrangements” on the other. The important distinction that should be made is between “relocations” and “rearrangements.”

The relocation of a post office from one building to another is covered by 39 CFR 241.4, “Expansion, relocation, and construction of post offices.” It says nothing about “rearrangements” or “realignments.” While the Commission has faced issues in defining “relocation” in its own regulations, there should be no

question about the fact that the relocations that are the subject of 241.4 have nothing to do with the “rearrangements” and “realignments” being discussed in this docket. The appeals that the Commission has dismissed as “relocations” — such as *Venice, Santa Monica, and Ukiah*¹¹ — are entirely different from the handful of cases where the Commission invoked the terminology of “rearrangement” and “realignment.” While “relocation” at least has a common-sense definition of moving a post office from one place to another, these other terms are much more ambiguous and, as a result, much more dangerous.

The statute and regulations are very clear: A post office can be closed temporarily under an emergency suspension, closed and then relocated to another building, or closed permanently as a discontinuance. There is nothing in the statute or regulations justifying another path to closure called “rearrangement” or “realignment.” The discontinuance statute, 39 USC 404(d), says nothing about “rearrangement” or “realignments” of retail services in a community. The federal regulations on discontinuances, closings, and consolidations — as articulated in 39 CFR 241.3 — do not mention “rearrangement” or “realignments.” These terms do not appear anywhere in the USPS Handbook PO-101, *Postal Service-Operated Retail Facilities Discontinuance Guide*. The Postal Service has never promulgated a rule concerning “rearrangement” or “realignment.”

This terminology is entirely the Commission’s own creation, and it has been repeated in several orders as if there were some firm foundation upon which to

¹¹ Docket A2013-1, Santa Monica Post Office, Santa Monica, California, Order Granting Motion to Dismiss, December 19, 2012 (Order No. 1588); Docket No. A2011-21, Ukiah Main Post Office, Ukiah, California, Order Granting Motion to Dismiss, August 15, 2011 (Order No. 804).

base these concepts. But the Commission has provided no evidence that the statute — both in terms of intent and language — should be read in such a way as to exclude certain types of post office closings because they are part of a “rearrangement” or “realignment,” whatever those terms may mean. The Commission has never explained how “rearrangements” that involve discontinuing a post office are somehow not discontinuances. Unless there is some compelling reason to do otherwise, the Commission should stick to the terminology in the statute and regulations. The only thing the Commission has been able to cite to justify its orders is its own previous orders. Argument by precedent without reference to statute is highly problematic and not grounded in legal authority.

When the Commission invokes “rearrangement” or “realignment” to dismiss an appeal, it is not “interpreting” 404(d). It is writing 404(d) out of the Postal Reorganization Act. The continued — and potentially expanded — use of these terms defeats the entire purpose of the statute. The Commission should not make interpretive changes that would thwart or negate the manifest purpose of 404(d) and render the due process guarantees of this section nugatory.

4. *Oceana* and its progeny should not be cited in order to dismiss appeals or to narrow the scope of the Commission’s jurisdiction.

The Commission’s terminology of “rearrangement” and “realignment” goes back to a series of cases that have become known as “*Oceana* and its progeny.”¹²

¹² See, for example, Docket No. A2007-1, Order Dismissing Appeal on Jurisdictional Grounds, Order No. 37, October 9, 2007 (*Ecorse*); Docket No. A2003-1, Order Dismissing Appeal on Jurisdictional Grounds, Order No. 1387, December 3, 2003 (*Birmingham Green*); Docket No. A86-

These cases are a poor foundation upon which to base future decisions. In almost all of them, nothing took place to distinguish the post office closing from a conventional discontinuance, and in most of them the Postal Service went through a discontinuance process rather than claiming that a discontinuance process was not necessary since the closing was merely part of a “rearrangement” or “relocation.” The Postal Service may have argued the appeal was outside the Commission’s jurisdiction because stations and branches are not post offices, but it did not argue for dismissal because the closing was only a rearrangement and hence not covered by 404(d). It was the Commission itself that introduced this argument for dismissing appeals.

The *Oceana* order was issued in 1982.¹³ The Postal Service added section 241.4 on facility relocations to the federal regulations in 1998. At that point, *Oceana* should have become irrelevant. The new regulations clearly distinguish a discontinuance from a relocation, and they explicitly state that the new section “is not intended to broaden, reduce, or otherwise modify the scope of the rules related to the discontinuance of post offices —prescribed by U.S.C. 404(b) and 39 CFR 241.3. Those requirements and criteria are unchanged by this

13, Order Dismissing Docket No. A86-13, Order No. 696, June 10, 1986 (*Wellfleet*); Docket No. A82-10, Order Dismissing Docket No. A82-10, Order No. 436, June 25, 1982 (*Oceana*).

¹³ In *Oceana Station*, Virginia Beach, VA (1982), several actions were being planned, including closing the Oceana Station, moving its boxes to the London Bridge Station (a quarter mile away), opening a new retail facility elsewhere in Virginia Beach (four miles away), possibly adding an additional contract station in the area, and so on.¹³ It is not clear from the Commission’s order (which is the only document on this case available on the PRC website) if the new facility was an *additional* facility in the area or the replacement for an existing one, but that didn’t seem to matter. The Commission concluded that Congress did not intend to give the Commission jurisdiction over “where retail facilities are to be located within the community” and “the Postal Service is not required to follow the formal section 404([d]) procedure when it is merely rearranging its retail facilities in a community.”

rule and will continue in full effect.”¹⁴ Nonetheless, in the “progeny” cases that came after 1998, the Commission continued to cite and build upon *Oceana* to justify dismissing appeals, even though the Postal Service never argued in these cases that it was doing a relocation and following the procedures in 241.4. The Commission simply introduced a new category of closures that, like relocations, was outside the scope of 404(d). As a consequence, the Commission has issued several orders that in my view simply do not conform to the statute.

For example, in *East Elko, Nevada*, the Postal Service wanted to discontinue services at East Elko Station and merge its services with the Elko Main Office. This should have clearly been seen as a discontinuance, and in the Order dismissing the appeal, the Commission itself observed, “The Postal Service decided to discontinue services at the East Elko Station requiring customers to utilize the Elko Main Post Office.”¹⁵ Yet the Commission still managed to dismiss on the grounds that East Elko residents were not losing access to postal services in their community because the Main Post office was in “close proximity” to the East Elko Station and the closure was just part of a “rearrangement” of postal services.

In *Pimmit*, the Postal Service closed two post offices — the Pimmit Branch and the Falls Church Main Post Office — and opened a replacement for the Falls Church post office a few blocks away. (The new office is now called the Falls Church Finance Station; there does not appear to be an MPO in Falls Church

¹⁴ 39 CFR Part 241, “Expansion, Relocation, Construction of New Post Office,” Postal Service Final Rule, Federal Register, September 2, 1998, p. 46654.

¹⁵ Order No. 477, Docket No. A2010-3, East Elko Station, Elko, Nevada, June 22, 2010, p. 7.

anymore.) The Postal Service conducted a discontinuance study on Pimmit Branch and eventually issued a Final Determination to close. In its filings with the Commission, the Postal Service argued that the case should be dismissed because Pimmit was a branch and hence not covered by 404(d), but it never argued that the case should be dismissed because the closure was part of a “relocation” or “rearrangement.” The Commission nonetheless invoked *Oceana* and several of its progeny to justify dismissing the *Pimmit* appeal on these grounds.¹⁶

The Pimmit Branch, it should be noted, was located in Pimmit Hills, a community in Fairfax County, Virginia (about a mile from the busy area of Tyson’s Corner). As Elaine Mittleman explained in her brief on the case, “Even though it has a Falls Church mailing address, the Pimmit Branch is not in the city of Falls Church.”¹⁷ According to the Commission’s reasoning, the Postal Service “rearranged” things in such a way that a Pimmit Hill’s post office was closed and replaced by a new post office in another community (Falls Church) — a new office, it should be emphasized, that was the new location for the MPO that was closing, a few blocks away. Before the “rearrangement,” there were two post offices, and after it there was one, yet somehow, according to the Commission’s analysis, no post office was discontinued under 404(d).

In *Glenoaks*, nothing took place aside from the closure of the post office. No new post office was opened, retail services were not relocated to a new building,

¹⁶ Order No. 1159, Docket No. A2011-90, Pimmit Branch, Falls Church, Virginia, Jan. 20, 2012.

¹⁷ Initial Brief of Petitioner Elaine Mittleman, Pimmit Branch, Falls Church, Virginia, December 9, 2011, p. 21.

no contract postal unit was created, and so on. The Postal Service went through a discontinuance process, issued a Final Determination to close, and produced the Administrative Record during the appeal. Yet when it came time to file its brief answering the appeal and defending its record, the Postal Service instead filed a Motion to Dismiss in which it argued that the “the scope of section 404(d)(5) is limited to the discontinuance of a Post Office, and does not apply to the rearrangement of retail facilities within a community.”¹⁸

This, I believe, was the first time that the Postal Service itself had used the “rearrangement” argument for dismissing an appeal. In all the previous cases where the concept came up, it was the Commission that had introduced it. This is one of the reasons why the *Glenoaks* case was so significant. It showed how the “rearrangement” rubric had evolved to a new stage where the Postal Service was now deploying it as an argument for dismissing appeals (along with continuing to use the “stations and branches” argument).

Rather than pushing back against this new tactic to get appeals dismissed, the Public Representative on *Glenoaks* agreed with the Postal Service. She argued that “the community will not experience a decrease or extinguishment of retail services,” customers will “continue to have access” to postal services at other locations, and what was happening in Glenoaks was simply a “rearrangement” of postal services. Hence the closure, she argued, was not subject to 404(d).¹⁹

¹⁸ Motion of United States Postal Service to Dismiss Proceedings, Docket No. A2013-05, Glenoaks Station, July 15, 2013.

¹⁹ Public Representative Response to United States Postal Service Motion to Dismiss

The logic here is highly problematic. To say that a community's post office could be closed without patrons experiencing a "decrease or extinguishment" in retail services makes no sense unless some new facility is opening to replace it. Moreover, the existence of other places where customers may have access to postal services is not relevant to the scope of 404(d). Using this reasoning, almost any post office could be closed as a "rearrangement" outside the scope of 404(d).²⁰

At this point, the Commission should simply stop citing the whole string of cases, from *Oceana* to *Pimmit* and *Glenoaks*. *Oceana* came before "relocation" became part of 39 CFR. 241.1 and should be seen as irrelevant. The appeals on *Pimmit* and *Glenoaks* were clearly within the scope of 404(d), and the Commission should never have considered dismissing these appeals. The argument that a discontinuance is not a discontinuance because it is a "rearrangement" simply does not stand up. The Commission has a legal

Proceedings, Docket No. A2013-05, Glenoaks Station, July 23, 2013. The comment reads as follows: "In the present case, Glenoaks Station customers' delivery service will not be interrupted. The Postal Service will continue to provide retail and city delivery to Glenoaks Station customers by and under the administrative responsibility of the Burbank Post Office, located 1 mile away. The community will not experience a decrease or extinguishment of retail services. Glenoaks Station customers will continue to have access to numerous alternative postal retail locations, nine of which are located within one mile radius and twenty-eight are located within a three mile radius, of the Glenoaks Station.... There is no claim or evidence presented that indicates this rearrangement will have an adverse affect on retail and delivery services of Glenoaks residents and businesses."

²⁰ Although not germane to the issues in this docket, it may be worth noting that in January 2014 — a few months after the Commission affirmed the Final Determination on *Glenoaks* — the Postal Service closed the Glenoaks Station, even though there was a moratorium on closures at the time. (Perhaps the Postal Service did not consider the station a "post office.") One of the main reasons — perhaps *the* main reason — the post office was closed was that back in 2009 the Postal Service had earmarked the building for disposal. Yet as of February 2016, the property remained on the market and it is currently listed on the USPS-CBRE Properties for Sale website. See "Postal Service ignores moratorium on post office closings, shuts down Glenoaks Station," January 31, 2014, savethepostoffice.com [<http://goo.gl/BdEa60>], and USPS Properties for Sale [<http://goo.gl/qA5yHJ>].

obligation to hear appeals. When the Commission deploys this concept as justification for dismissing an appeal, it is exceeding its own authority.

5. Proximity to other post offices or alternate channels is not appropriate criteria for determining the Commission’s jurisdiction to hear appeals.

One of the recurring themes in the comments about “rearrangements” and “realignments” is the fact that another post office — or alternative retail channels — may be in close proximity to the post office that is closing and that, as the Public Representative argued in *Glenoaks*, customers will continue to have ready access to postal services at other locations.

Proximity is certainly important. When the Postal Service studies a post office for discontinuance, it takes note of the other places where customers can do postal business. When the Commission reviews an appeal, it too takes note of these facts. But this is not a subject that should have any bearing on whether a closure falls within 404(d). Congress did not include anything in the statute that said the law did not apply if there were other alternatives in “close proximity,” and there is nothing in the statute that would suggest Congress intended for 404(d) to apply only when there are no other post offices or alternative access options within a particular distance.

The distance to other options is an ambiguous and subjective matter and not an appropriate factor in interpreting the scope of the statute. One mile in Manhattan is not one mile in rural Nebraska. As-the-crow-flies distances do not

take into consideration the actual time it takes to go from one place to another, weather conditions for driving, the routes people take on their daily outings, the availability of public transportation, special issues for seniors and the disabled, safety issues, and so on. Even if there were a standard by which the Commission could determine what distance is “reasonable” or “close enough,” this would not be relevant to interpreting the meaning of 404(d) or the Commission’s jurisdiction over appeals.

If the Commission were to adopt such a view of the “close proximity” argument, it would find itself in the position of having to evaluate whether or not the distance to another post office is “reasonable” or “close” (or whatever) each time it decided whether or not to hear an appeal. That’s putting the cart before the horse. The Commission should hear the appeal and only then evaluate considerations that are relevant to 404(d).

It may be worth noting in this regard that Congressman Darrel Issa proposed legislation in 2013 that would have revised Section 404 to say that the appeals process “shall not apply to a determination of the Postal Service to close a post office if there is located, within 2 miles of such post office, a qualified contract postal unit.”²¹ By pointing to the proximity of alternative access channels as an argument for narrowing its jurisdiction over appeals, the Commission is doing something similar to this proposed legislation. But the mere fact that this legislation was proposed is further evidence that *under current law* the proximity

²¹ H.R.2748 - Postal Reform Act of 2013, introduced July 19, 2013, Section 103.

to another post office or CPU or any other alternative access is not relevant to the scope of the Commission's jurisdiction to hear appeals.

6. As the Commission has held in numerous cases, contract post offices should be considered “post offices” within the scope of 404(d).

As with the long-standing debate over the status of “stations and branches” as “post offices,” it is not up to the Postal Service to determine the Commission's interpretation of terms, the law, or its jurisdiction. The Commission's previous orders make it clear that the common sense definition of “post office” should apply to Contract Postal Units and Community Post Offices, regardless of the Postal Service's technical definitions. In all of its rulings on *Knob Fork* and its progeny during the 1980s and 1990s, the Commission was adamant that the Postal Service's technical definition of “post office” was not relevant to the issue of whether or not CPUs and CPOs are covered by 39 U.S.C. 404(d).

As the Commission stated in its order on *Knob Fork*, “In ordinary usage, a ‘post office’ is a retail facility where patrons may purchase postal services, and dispatch and possibly receive mail.”²² The Commission found that the fact that the Postal Service had other, more “technical or specialized” definitions was not relevant. Similarly, the fact that postal policies — e.g., 241.3(a)(2)(ii) and the USPS Discontinuance Guide — may distinguish between USPS-operated facilities and contractor-operated facilities was not considered relevant to the

²² PRC Order Remanding Final Determination, *Knob Fork*, West Virginia 26579 (No. A83-30), January 18, 1984, p. 3.

Commission's view of its jurisdiction with regard to 404(d).

In its order on *Knob Fork*, the Commission observed that when the Postal Service wanted to convert a post office to a CPO, it always emphasized to the community — as it did to the Commission in fighting the appeal — that in the public's perception, the two types of facilities function in exactly the same manner and provide the same services. If that's the case, asked the Commission, why should closing a CPO not follow the same procedures? As the Commission put it in the final order on *Knob Fork* (at 7):

If we accept the Postal Service's consistent position that a community post office serves the public in much the same way as an independent post office, the more reasonable reading of section 404(b) is that it is to apply whenever the Postal Service proposes to close or consolidate a community's retail postal facility. The public generally describes these facilities as "post offices." Congress was concerned about the effects on the community resulting from the Postal service's decisions on retail facilities.

In several subsequent cases, the same issues were addressed, and the Commission came to the same conclusion.²³ In these cases, the appeals did not come from communities where the Postal Service wanted to close a CPO as in *Knob Fork*. Instead, they all involved places where the Postal Service wanted to close an independent post office, consolidate it with a post office in another

²³ These include: Reed, Oklahoma 73563 (No. A83-13): Affirmed, March 15, 1983; Foraker, Indiana 46525 (No. A84-5): Remanded, March 6, 1984; Ranchita, California 92066 (No. A85-17): Remanded, June 12, 1985; Little Norway, California 95721 (No. A85-20): Affirmed, October 28, 1985; Cataract, Wisconsin 54620 (No. A93-19): Affirmed, January 21, 1994; Waka, Texas 79093 (No. A94-1): Affirmed, February 4, 1994; Inavale, Nebraska 68952 (No. 94-3): Affirmed, March 15, 1994; Benedict, Minnesota 56436 (No. 94-8): Remanded, August 3, 1994; Green Mountain, Iowa 50637 (No. A94-9): Affirmed, August 16, 1994; Strang, Nebraska 68444 (No. A94-13): Remanded, October 28, 1994; North Egremont, Massachusetts (No. A89-1)

town, and replace the closed office with a CPO. In each case, one of the objections raised by the petitioners was that if their independent post office were converted into a CPO, the Postal Service could terminate the contract at any time and leave them without a post office at all. In response, the Commission repeatedly cited *Knob Fork* and affirmed its view that CPOs were in fact covered by section 404.²⁴

In *Cataract, WI*, for example, the Commission looked ahead to the possibility that the Postal Service might one day decide to close the CPO and stated the following:

The Commission has held that the same 39 U.S.C. § 404(b) procedures that apply before the Postal Service decides to close an independent post office such as the Cataract office will apply when the Postal Service proposes to close a community post office that is the only retail postal facility serving the community.²⁵

In *Benedict, MN*, the Commission remanded the case, with a similar observation:

The Rate Commission believes that the appeal rights provided by section 404(b) of the Reorganization Act extend to closures of community post offices. Where residents express concern about the future of the proposed CPO, the Rate Commission feels that residents should be informed that they could appeal a CPO closure to the Commission, just as they may appeal the closure of independent post offices.²⁶

The Postal Service filed a Legal Memorandum saying it would not solicit citizen

²⁴ In some cases, the PRC remanded the decision to convert the post office into a CPO for precisely this reason (sometimes along with other concerns as well). In other cases, the Postal Service's decision to convert the post office into a CPO was affirmed, but the Commission took the opportunity to note that if the Postal Service ever decided to close the CPO, the decision could be appealed to the PRC. In a few cases, the closing decision was affirmed, but one or two commissioners issued dissenting opinions because of the 404(b) issue.

²⁵ Commission Opinion Affirming Decision, *Cataract, Wisconsin* 54620 (No. A93-19), January 21, 1994, p. 6.

²⁶ Commission Opinion Remanding Decision, *Benedict, Minnesota* 56436 (No. 94-8): August 3, 1994, p. 8.

comments nor evaluate the 404(b) factors when deciding whether to maintain CPO service at Benedict, MN. “The Commission,” states the Order on *Benedict*, “finds this ignores the clear purpose of the 404(b) legislation.”

In all of these cases, the Commission was well aware of the Postal Service’s arguments, and in each case, the Commission nonetheless affirmed that a CPO was a “post office” under 404(d). There was no reason for the Commission to change its position on this matter in *Alplaus* and *Careywood*.

7. Expanding the meaning of the “sole source” test to include alternative retail channels will not only end appeals for all CPUs and CPOs; it will also be used to justify dismissing appeals on USPS-operated post offices.

The Commission’s Order initiating this docket states, “While CPUs generally do not fall within the scope of 39 U.S.C. 404(d), in select circumstances when the Commission determines that a CPU is the sole source of postal retail services to a community, it has found that section 404(d) (both the statutory intent and language) justifies the Commission exercise of review authority over sole source CPU closures and consolidations.”

With all due respect to the Commission, this is not entirely accurate. As *Knob Fork* and subsequent cases clearly show, the Commission has a long history of clearly stating that CPUs *do* fall within the scope of 404(d). As far as I have been able to determine, the *only* cases where the Commission deemed a CPU as outside the scope of 404(d) are *Alplaus* and *Careywood*. It was only with these two cases that the Commission decided to deploy the “sole source”

standard do dismiss the appeals, and in both cases the Commission expanded the “sole source” test to include not only post offices but alternative retail access channels as well.

The phrase “sole source” appears to go back to *Green Mountain* in 1994.

In its order on this case, the Commission stated the following:

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.... 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.²⁷

When it used the phrase “the sole source of postal services” here, the Commission was referring to other post offices, whether contract or USPS operated, and not all the alternatives retail options. In its orders on *Alplaus* and *Careywood*, however, the Commission changed the meaning of the phrase to encompass all the non-post office alternatives as well.

In *Knob Fork*, the Commission looked to the legislative history for guidance on which definition of “post office” Congress had in mind when it passed 404(b), the provision that later became 404(d). The history did not provide a definitive answer, but legislators did make comments that shed light on the issue. Several, including Senator Jennings Randolph of West Virginia, had expressed concerns about protecting small rural post offices, and the Commission concluded that “it is not reasonable, given these concerns, to believe that the availability of the

²⁷ 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).

comment procedure [required for a post office closing] should turn on whether *the only postal facility in the community* is operated by a postal employee or a private contractor” (*Knob Fork*, p. 5; italics added).

The reference to “the only postal facility in the community” is again clearly to post offices, not alternative channels. But in the *Alplaus* case, the Commission decided to turn “sole source” into a “standard” for determining whether or not 404(d) applied, and at the same time it expanded the meaning of “source” to include places other than post offices and contract units where one might buy stamps or send a package. The Commission’s Order on *Alplaus* thus points not only to other post offices in the area but also twenty other “alternate access locations within a 5-five radius.” Given these options, the Commission concluded that the Alplaus CPO was not the “sole source” of postal services for the community, so the appeal did not fall within the Commission’s jurisdiction.

In *Careywood*, the Commission went even further and dismissed the appeal even though it was clear that there were *no* alternative access options in the community. The nearest post offices were about seven miles, in Bayview and Athol, and the nearest “alternative access location” was a CPU in Hayden, almost 21 miles away.²⁸ As Commissioner Goldway observed in her dissenting opinion on *Careywood*, when the majority opinion interpreted “community” to encompass “a much broader surrounding region,” it was introducing a “new and untested criterion.” “By adopting a new interpretation and test for jurisdiction over section

²⁸ See “The USPS and PRC ponder the meaning of “post office”: The appeal on the Careywood Idaho CPO,” Save the Post Office (March 29, 2015) <http://www.savethepostoffice.com/usps-and-prc-ponder-meaning-post-office-appeal-careywood-idaho-cpo>

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.” (Dissenting Opinion at 4)

By expanding the meaning of the “sole source” standard to include any and all sources of postal services and by arbitrarily enlarging the geographic range of “community” until there are at least some other sources “within” the community, the Commission has ensured that all contract units can now be closed without a discontinuance study or the right to appeal. Given how important so many of these contract post offices are to their communities, this is bad enough. But the consequences will be more far reaching. There is nothing to prevent the sole source standard from being applied to USPS-operated post offices as well. Any post office in the country could be closed without a discontinuance study or an appeal simply by citing the “sole source” precedents.

If that seems too far-fetched, consider that in its comments in *East Elko*, the Postal Service argued that the Commission’s jurisdiction on appeals should be limited to “the last or only retail facility in a community” and should therefore not encompass stations and branches, since they are never the “last or only” retail facility in the community. In making its argument, the Postal Service cited not only appeals cases that involved USPS-operated post offices, such as *Oceana*, but also cases that involved CPOs, such as *Knob Fork* and *Reed, Oklahoma*. It is not hard to imagine the Postal Service — or the Commission — citing *Alplaus* and *Careywood* to argue that because a USPS-operated post office is not the “sole source” of services in the community, it too is outside the scope of 404(d). If the

“sole source” standard makes sense when applied to CPUs and CPOs, why should it not also apply to USPS-operated post offices?

As with “rearrangement” and “realignment,” the Commission itself has created the confusion and problems associated with the “sole source” standard. The term does not appear anywhere in the Postal Reorganization Act, and at no time did Congress indicate that the availability of other ways to do postal business was determinative of whether or not a post office was a post office under 404(d). The Commission should not make future decisions using such a test to interpret the statute or to determine whether a closing falls within 404(d).

8. The availability of alternative access options is not justification for redefining the Commission’s jurisdiction.

In its decision on *Careywood* (at 12) and in the Order initiating this docket (at 9), the Commission refers to section 302 of the Postal Accountability and Enhancement Act of 2006, in which Congress required the Postal Service to develop a plan for the expansion of access to alternate retail services, including the Internet and non-post office access channels.

It is important to note that while encouraging expanded access, PAEA did not change the meaning of “post office” or “discontinuance” or “retail postal facility.” In fact, in enacting PAEA, Congress re-adopted section 404 of the Postal Reorganization Act without making any changes that would have a bearing on the Commission’s jurisdiction to hear appeals. Whatever the intentions of PAEA or its architects with regard to replacing post offices with alternatives, the

legislation did not change the intent or language of 404(d).

Moreover, in encouraging expanded access to postal services, the authors of PAEA were very explicit that the legislation would not make it easier to close post offices. In the section of the Senate committee's report on PAEA that discusses expanded access, the committee wrote this (*italics added*):

S. 2468 maintains the current prohibition on closing post offices solely because they operate at a deficit, ensuring that rural and inner-city communities where post offices do not earn a profit continue to have access to retail services. *It also in no way makes it any easier for the Postal Service to close a post office for any reason.*²⁹

In encouraging the growth of alternative access, Congress did not intend to make it easier for the Postal Service to close post offices. Yet when the Commission cites PAEA and its provisions about alternative access as justification for dismissing an appeal — as in *Alplaus* and *Careywood* — or for narrowing the scope of its jurisdiction over appeals — as seems intended by this docket — the Commission is in fact making it easier for the Postal Service to close post offices. Without the prospect of an appeal, there is little need for the Postal Service to go through a robust discontinuance study — or any discontinuance study, for that matter — and dismissing a case makes the closing easier for both the Postal Service and the Commission, since they can avoid the legal and administrative work required for appeals.

Pointing to the availability of alternative access is problematic for another

²⁹ Postal Accountability And Enhancement Act: Report Of The Committee On Governmental Affairs United States Senate Together With Additional Views To Accompany S. 2468 To Reform The Postal Laws Of The United States, August 25, 2004. <https://www.gpo.gov/fdsys/pkg/CRPT-108srpt318/html/CRPT-108srpt318.htm>

reason. While some of types of alternatives have increased in number, the growth of expanded access has not been quite as dramatic as advertised. USPS press releases often boast that there over 100,000 locations across the nation where postal business can be done,³⁰ but that's about the same number that existed in 2008.³¹ Some 65,650 of these locations³² — two-thirds of them — are banks, grocery stores, and pharmacies that simply sell stamps on consignment and nothing more. The number of Automated Postal Centers has not grown significantly over the past few years. In 2003, the Postal Service deployed 2,500 kiosks,³³ and at the end of FY 2015, there were 2,843 of them.³⁴ The Postal Service often cites Village Post Offices as another form of expanded access, but they are not widely available — there are only 875 of them in the entire country³⁵ — and they only sell stamps and some Priority products. The number of CPUs has actually been declining — from 6,434 in 1971 to 3,610 in 2011 to 2,965 in 2015.³⁶ Since the Approved Shipper program was created in 2005, the number of locations has increased to about 6,400 (including about 1,000 Staples),³⁷ but that

³⁰ U.S. Postal Service Expands to 100,000 Locations, May 19, 2011 [https://about.usps.com/news/national-releases/2011/pr11_053.pdf]

³¹ In its report “Postal Accountability and Enhancement Act § 302 Network Plan,” June 2008, the Postal Service stated that there were “over 37,000 Post Office locations and 63,000 alternate access points” (p. 41).

³² United States Postal Service 2015 Annual Report to Congress, p. 33.

³³ Postal Accountability and Enhancement Act § 302 Network Plan, June 2008, p. 44.

³⁴ Responses of the United States Postal Service to Chairman’s Information Request No. 6, Annual Compliance Review 2015, Docket No. ACR2015, February 3, 2016.

³⁵ United States Postal Service 2015 Annual Report to Congress, p. 26.

³⁶ See The U.S. Postal Service: Common Questions About Post Office Closures, Congressional Research Service, June 13, 2012, p. 3, and Responses of the United States Postal Service to Chairman’s Information Request No. 6, USPS-FY15-45, February 3, 2016.

³⁷ USPS OIG Audit Report, “Oversight of the Approved Shippers Program,” May 26, 2015, p. 1.

increase is largely offset by the decline in the number of post offices — from about 40,000 (including contract units) in 1980 to about 36,640 today (excluding VPOs).³⁸ In short, expanded access has not significantly altered the landscape of postal retail services in such a way as to change the meaning of 404(d).

Citing alternatives to the post office is also problematic for another reason. There may be an alternative option in the vicinity of the post office one day, but it can close on a moment's notice, and many of them do. During FY 2015, for example, the Postal Service closed 215 CPUs.³⁹ Just a few weeks ago, Walmart announced that it would be closing 154 stores, most of which appear on the USPS Find Locations website as places where one can buy stamp booklets. If the APWU were to prevail in its NLRB case against the Postal Service over the Staples issue, it's possible that a thousand Approved Shipper locations could similarly disappear.

In terms of revenues, the only alternative access option that has shown significant growth is PC Postage.⁴⁰ The Postal Service has worked hard to encourage customers to do business via the Internet. According to a recent promotional campaign, the Postal Service is calling USPS.com “the world's largest post office.” As the press release states, “Customers are always at the

³⁸ United States Postal Service 2015 Annual Report to Congress, p. 26.

³⁹ Responses of the United States Postal Service to Chairman's Information Request No. 6, Library Reference USPS-FY15-45, Annual Compliance Review 2015, Docket No. ACR2015, February 3, 2016.

⁴⁰ In FY 2015, while total retail revenues were up slightly (0.85 percent) over the previous year, revenues from stamps-on-consignment sales were down 9.46 percent; contract postal unit revenues were down 4.98 percent; other sources were down 5.66 percent. Only PC Postage showed a significant increase of 11.1 percent. See Responses of the United States Postal Service to Question 6 of ChIR No. 6, ACR 2015, January 29, 2016.

front of the line at this Post Office that never closes. With a click of the mouse customers can conveniently ship from their homes to any location by scheduling a next-day package pickup — saving a trip to the Post Office.”⁴² Such wordplay may be useful in a promotional campaign, but a virtual “post office” is not a substitute for a real post office. As Commissioner Goldway observed in her Dissenting Opinion on *Careywood*, “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.”⁴³ Perhaps more important, not everyone has access to the Internet and USPS.com. According to the 2015 Broadband Progress Report done by the Federal Communications Commission, 55 million Americans – 17 percent of the population – lack access to advanced broadband, and “a significant digital divide remains between urban and rural America: Over half of all rural Americans lack access to 25 Mbps/3 Mbps service.”⁴⁴ For these Americans, it hardly matters that the USPS.com “Post Office” never closes. In any case, there is nothing in the statute to suggest that a post office can be closed outside the scope of 404(d) simply because customers can do some postal business via the Internet.

Arguing that 404(d) needs to be reinterpreted in the context of alternative

⁴² “World’s Largest Post Office Does More Business Than Post Offices in Top Five Media Markets Combined” (December 08, 2015) https://about.usps.com/news/national-releases/2015/pr15_066.htm

⁴³ Dissenting Opinion of Commissioner Ruth Y Goldway, Docket No. A2015-2, *Careywood Post Office*, Careywood, Idaho, May 27, 2015 (Order No. 2505).

⁴⁴ Broadband Progress Report, Federal Communications Commission, Feb. 4, 2015. <https://www.fcc.gov/reports-research/reports/broadband-progress-reports/2015-broadband-progress-report>

access is misguided for yet another reason. As the Commission points out in the Order creating this docket, in 2011 the Postal Service changed the meaning of “consolidation” in 404(d). It had previously (and originally) referred to converting the management of a post office from a postmaster in the post office to a postmaster in another post office. Consolidation now refers to converting a USPS-operated post office to a contractor-operated retail facility under the supervision of a USPS-operated post office. (See 39 CFR 241.3(a)(2)(iv).) Under both definitions, the post office continues to offer the same services, before and after the consolidation. All that has changed is the status of who operates it. When the Commission points to all the alternative retail channels where, after the post office closes, one may buy stamps and perhaps do other postal business as well, it is essentially saying that these alternatives are satisfactory alternatives to the post office. If changing *who* operates a post office is significant enough to trigger a discontinuance study and ensure the opportunity for appeal, it should be clear that replacing a post office with alternative access options has even more significance and should fall within 404(d).

Arguing that the existence of alternative access has changed the meaning of 404(d) leads to absurd results. In Detroit, there are the Main Post Office, 28 postal stations, and about fifty Approved Postal Providers that sell stamps and sometimes other postal products. The Postal Service could conceivably close every single one of these 28 stations and say that it is merely doing a relocation or realignment, that the post office is not the “sole source” of postal services, and that customers will continue to have access to postal products at these fifty

Approved Providers. The Postal Service would not need to go through a discontinuance study, and the Commission would not need to hear appeals, on any of these 28 stations. As extreme as the example may seem, this is, in fact, what the Postal Service claims, since it does not consider stations to be covered by 404(d). When the Commission dismisses appeals because there will be other options after the post office closes, it is doing much the same thing.

9. The Commission should define “relocation” and “community” in its regulations.

Rather than trying to clarify confusion that the Commission itself has created by dismissing appeals because the closing was “merely” part of a “rearrangement” or because the post office failed to satisfy the “sole source” standard, it should do something more helpful. It should return to the issue of how to define “relocation” left unresolved in Order No. 1171, docket No. RM2011-13, and it should address the issue of what “community” means in this context.

While the meaning of “relocation” would seem to be a relatively straightforward matter, it has proven controversial. In Order No. 1171, the Commission observed that in the Proposed Rule — 3025.1 (Definitions) — it had offered a definition of “relocate” as follows: a situation in which “the location of a post office within a community changes, but the total number of post offices within the community remains the same or increases.”⁴⁵ This seemed like a common-

⁴⁵ Order Adopting Final Rules Regarding Appeals Of Postal Service Determinations To Close Or Consolidate Post Offices (January 25, 2012)
<http://www.prc.gov/docs/80/80005/Order%20No.%201171.pdf>

sense definition, but as comments filed on the matter showed, it's not a simple matter to the stakeholders. The Postal Service and Valpak thought the definition was too narrow, while the APWU thought it was too broad.

The Postal Service claimed that “the number of brick and mortar facilities used to provide service within a community is not dispositive of whether a relocation has occurred.”⁴⁶ This presumably means that a post office could be “relocated” to — i.e., merged with — a pre-existing post office or that two post offices could be merged together into one new location. In the end, there would be one fewer post office in the community, but no discontinuance would have taken place.

This logic plays a shell game with postal facilities. As the post office is moved from one place to another, it somehow disappears — “now you see it, now you don't.” Thanks to this sleight of hand, we are supposed to believe the post office never actually “closed.” But the Postal Service's own regulations on relocations in 241.4 give no suggestion that two facilities can be relocated to one location or that one post office can be merged with another without a discontinuance procedure. In fact, in discussing the Final Rule for 241.4 back in 1998, the Postal Service described a hypothetical situation in which it might consider consolidating two substandard post offices and “relocating all operations to a single new building convenient to both affected areas.” This did not mean that no discontinuance had taken place. “In that situation, the Postal Service

⁴⁶ Initial Comments of the United States Postal Service, Docket No. RM2011-13 (October 3, 2011) <http://www.prc.gov/docs/76/76301/RM13Comments.pdf>

would comply both with the discontinuance rules at 39 CFR 243.1 with respect to the closing/consolidation decision and with this facility project rule with respect to the decisions about selecting or building a new facility.”⁴⁷

In examining how to define “relocation,” the APWU made a more reasonable point. It pointed out that the Postal Service might close a post office on the east side of Detroit and then open a new post office several miles away on the west side. The APWU observed that “under the proposed definition this would be a mere relocation and an appeal would not be available. But the postal customers who relied upon the east side facility would experience a loss of a post office akin to a straightforward closure.”⁴⁸

The APWU’s observation shows that “relocation” is not always a simple matter of moving postal services from one place to another. But there should be no question about the issue of counting facilities. If there are X number of post offices in the community one day, and then one fewer the next day, a post office has been closed and 404(d) must apply. No definition of “relocation” should exclude this simple fact. A post office cannot disappear without a discontinuance study and the right to an appeal before the Commission.

In addition to clarifying the meaning of “relocation,” the Commission should also address the definition of “community,” since it was a key term in the Proposed Rule 3025.1. As the APWU’s example illustrates, it makes little sense

⁴⁷ 39 CFR Part 241, “Expansion, Relocation, Construction of New Post Office,” Postal Service Final Rule, Federal Register, September 2, 1998, p. 46654.

⁴⁸ American Postal Workers Union, AFL-CIO Comments On Proposed Rules, Docket No. RM2011-13 (October 5, 2011)
<http://www.prc.gov/docs/76/76417/APWU%20Comments%20RM2011-13.pdf>

to talk of “relocating” a post office within a “community” if there is no clear definition for “community.” This issue has come up many times, and it has not been adequately resolved.

During the POSTPlan Advisory Opinion process, for example, Elaine Mittleman posed this interrogatory to the Postal Service: “What definition of community does the Postal Service use in determining the effect on the community of a change in service or change or relocation of retail facilities?”⁴⁹ In reply, the Postal Service referred Mittleman to Handbook PO-101, which offers this definition of “community”:

A general term that denotes a group of individuals, with common interests, living in a particular area. These common interests may arise from social, business, religious, governmental, scholastic, or recreational associations and may involve consideration of shared institutions, traditions, and public services that help bind the people of the community together. Institutions, services, and associations do not always have clear centers or geographic boundaries. A community, therefore, is not necessarily formally organized or confined within corporate limits.⁵⁰

This may sound reasonable enough, but according to this definition, the entire United States could be seen as a “community.” In fact, the scholar Benedict Anderson has coined the term “imagined community” to analyze “communities” like the nation-state where people do not have everyday face-to-face interaction.⁵¹

If the entire nation is a “community” or if an online association is a “community,” it becomes fairly meaningless to talk about “relocating” a post office

⁴⁹ United States Postal Service Responses to Elaine Mittleman Interrogatories (EM/USPS-1—14, 18, And 20—26), Post Office Structure Plan, Docket No. 2012-2, June 29, 2012.

⁵⁰ USPS Handbook PO 101, *Postal Service-Operated Retail Facilities Discontinuance Guide*

⁵¹ Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (1983).

in a community. This becomes even more problematic when the Commission makes judgments about “rearranging” postal services in a community or about whether a post office is the “sole source” of postal services in a community. To what “community” is the Commission referring?

Even at smaller geographic scales, the problem persists. Is an entire city a “community”? That is what the Postal Service has claimed. In its comments for *East Elko*, the Postal Service quoted a passage from the Commission’s order on *Oceana*, and observed, “This language clarifies that for purposes of section 404(b), the entire city is a single community.” If that is so, given that most cities have several post offices and numerous alternative access options, no postal facility could be said to be the “sole source” of the community’s postal services, and any closure could be seen as a rearrangement of postal services within the “community.” As the APWU’s comments about the Detroit example make clear, such a definition of “community” is simply not useful.

The meaning of “community” has also proven elusive in rural areas, where there are usually only small post offices and not stations and branches. In dismissing the *Careywood* appeal, the Commission ended up trying to have it both ways: Careywood was a distinct “community” — as the members of the community said repeatedly in their comments on the appeal — but since there were no other sources of postal services in this community, the Commission simply expanded the geography of “community” until there were other sources within it. The contradiction was obvious. As Commissioner Goldway put it in her dissenting opinion on *Careywood* (at 4):

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.

If the geographic scope of “community” can be enlarged until it encompasses a sufficient number of points of postal services to justify dismissing an appeal, it is fairly pointless to worry about the meaning of “relocation” and “rearrangement” and “sole source.”

Coming up with a useful definition of “community” should not be so difficult. When it comes to post office closings and interpreting 404(d), a community should be viewed, in the words of the USPS Discontinuance Guide, as individuals who share “common interests, living in a particular area,” and the key “common interest” these individual share is their post office. They live near it, they work near it, they have a PO box in it, they meet and greet their neighbors there, and it helps bind them together. For the members of this community, it is *their* post office, and they comprise the community it serves.

For that reason, every community has but one post office. Whether it’s a post office, station, branch, or contract post office, and regardless of what alternative retail channels may exist in the area and regardless of how close or far away they may be, when the post office is earmarked for closure, the Postal Service should go through a thorough discontinuance process and the

Commission should hear the appeal without looking for reasons to dismiss. It shouldn't be any more complicated than that.

Respectfully submitted,

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