

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Bronx General Post Office
Bronx, New York 10451

Docket Number A2013-6

**REPLY TO THE UNITED STATES POSTAL SERVICE
MOTION TO DISMISS**

(July 29, 2013)

In its Motion to Dismiss, the Postal Service argues that the Commission lacks jurisdiction to hear the appeal on the Bronx General Post Office because the facility action involved is a relocation, not a discontinuance.¹ The Postal Service cites several previous orders in which the Commission dismissed an appeal because it believes that 39 U.S.C. 404(d) does not apply to a relocation of retail operations to another facility in the same community. The Postal Service claims that the decision to transfer retail operations from the Bronx GPO is “analogous” to the other relocation actions it cites. The Postal Service concludes its Motion as follows:

By filing a petition with the Commission, the petitioner implicitly argues that the Postal Service should have followed the procedural requirements of 39 U.S.C. §404(d) and 39 C.F.R. §241.3 as part of its decision to relocate the Bronx GPO. But the procedures for a relocation are governed by 39 C.F.R. §241.4, not 39 C.F.R. §241.3.

¹ Motion of United States Postal Service to Dismiss Proceedings (July 18, 2013), Regarding the Bronx General Post Office, Bronx, NY 10451, PRC Docket No. A2013-6.

In sum, this appeal concerns the relocation of a Post Office. Thus, 39 U.S.C. §404(d) and 39 C.F.R. §241.3 do not apply and the Commission lacks jurisdiction. Accordingly, the Commission should dismiss the appeal.

The petitioners do indeed argue that the Postal Service should have followed the procedural requirements of 39 U.S.C. §404(d) and 39 C.F.R. §241.3 in making a decision to relocate the Bronx GPO. The basis for our argument is that the regulations on relocations, as described in 39 C.F.R. §241.4 — the regulations the Postal Service claims to be following — explicitly state that when a facility action subject to 241.4 also involves a historic property covered by the National Historic Preservation Act (NHPA) or closing a post office, that facility action shall be governed by the discontinuance statutes, i.e., 404(d) and 241.3, which give individuals the right to appeal to the Commission. The closing of the historic Bronx General Post Office will have significant impacts on the Bronx, and the community should have the right to appeal the decision to the Commission. The regulations on “relocations” were never intended as a short cut to making such an important decision or as a way to minimize public participation, which is how the Postal Service is now using them.

To make its case, the Postal Service relies almost entirely on a handful of Commission orders that it considers “analogous” to the case of the Bronx GPO. These precedents, however, are not sufficiently similar to the Bronx case to make this argument persuasive. Our argument, on the other hand, does not rely on previous orders by the Commission. It is based on the text of the statutes, the Postal Service’s stated intentions for introducing the new regulations on relocations and expansion (as explained in the Interim Rule and Final Rule

associated with 241.4), and examples of what the regulations are supposed to be about (as expressed in the Community Relations Regulations handbook prepared by the Postal Service to implement 241.4). The Commission may be inclined to accede to the Postal Service's argument, based as it is on previous Commission orders, but we believe that an argument based on the text of the regulations, the Rules published in the Federal Register, and the handbook circulated internally, is ultimately more persuasive.

ARGUMENT

The crux of our argument resides in 39 C.F.R. 241.4, the section of the Code entitled "Expansion, relocation, and construction of post offices." The key passage is section (d), entitled "*Discontinuance of post offices; historic preservation.*" It reads as follows:

(1) It is the policy of the Postal Service, by virtue of Board of Governors Resolution No. 82-7, to comply with Section 106 of the general provisions of the National Historic Preservation Act, 16 U.S.C. 470, *et seq.*, Executive Order 12072, and Executive Order 13006. Therefore, any facility project that will have an effect on cultural resources will be undertaken in accordance with that policy.

(2) Any action involving the closing or other discontinuance of a post office shall be undertaken only in accordance with 39 U.S.C. 404(b) and 39 C.F.R. 243.1.² In the event a facility action is subject to both this section, and either the NHPA or the post office discontinuance requirements, all comment periods and other public participation matters shall be governed by those statutes.

² The reference to C.F.R. 243.1 appears to be a typographical error; it should be 241.3. Also, subsequent to the introduction of 241.4 to the Code of Federal Regulations, 39 U.S.C. 404 was revised; the more recent citation for the paragraph on discontinuances is 404(d) rather than 404(b).

Paragraph (2) of 241.4(d) describes the special circumstances under which a facility action shall be governed by the discontinuance statutes, i.e., 39 U.S.C. 404(d) and 39 C.F.R. 241.3. There are two such circumstances. One occurs when a facility action is subject to both “this section” — 241.4 on expansion, relocations, and new construction — and the National Historic Preservation Act (NHPA). The other occurs when a facility action is subject to both 241.4 and the post office discontinuance requirements.

We believe that the closing of the Bronx GPO and relocation of retail services somewhere else satisfies both of these special circumstances. It involves a relocation and the NHPA; it also involves a relocation and a discontinuance. Either of these circumstances would require the Postal Service to conduct a full discontinuance procedure on the Bronx GPO and permit an appeal to the Commission.

1. The facility action on the Bronx GPO involves both a relocation and the NHPA, and is hence subject to the statutes on discontinuances.

39 C.F.R. 241.4(d) states that if a facility action is subject to both 241.4 and NHPA, the Postal Service will follow the discontinuance requirements of 404(d) and 241.3.

The closing of the Bronx GPO clearly satisfies these two conditions. The Postal Service’s Motion to Dismiss states that it followed the requirements for a relocation under 241.4, and while it has not announced a new location, the Postal Service says that after it closes the Bronx GPO, it will open a smaller

facility somewhere in the community.³ The action thus falls under 241.4.

It may be noted that wording of 241.4(d)(2) leaves open the possibility that “this section” refers to something other than 241.4, but that is unlikely. The term “section” appears in the Final Rule several times; it is used to refer to the entire section 241.4 or to specific passages within it. In the context of 241.4(d)(2), however, the only interpretation for “this section” that makes any sense is the entire 241.4. It would be meaningless to describe a facility action that is “subject” to “this section” if that term referred to 241.4(d)(2) itself, and there is no other section to which it could refer. This reading of the passage is confirmed by the fact that “this section” appears in the text of 241.4 seven times, not including (d)(2), and in each case it is very clear that it refers to the entire 241.4. For example, the very first sentence of the 241.4 reads, “(a) *Application*. (1) This section applies when the USPS contemplates any one of the following projects with respect to a customer service facility,” etc.

The facility action in the Bronx is thus “subject” to “this section,” i.e., 241.4. It is also subject to the NHPA. Mr. Tom Samra’s Final Decision rejecting the appeals on the Bronx decision acknowledges that closing the Bronx post office also falls within the scope of the NHPA. Mr. Samra writes that the Postal Service recognizes that “the Bronx GPO is a historic property as defined in the Section 106 [of NHPA] regulations because it is listed in the Nation Register of

³ News of the proposed relocation and sale was reported widely by the media, e.g., New York Times (Feb. 1, 2013) (cityroom.blogs.nytimes.com/2013/02/01/postal-service-considers-sale-of-bronx-general-post-office/?_r=0), and DNA Info New York (Feb. 1, 2013) (www.dnainfo.com/new-york/20130201/concourse/us-postal-service-wants-sell-historic-bronx-post-office).

Historic Places.”⁴ The Motion to Dismiss confirms this: “The final decision recognized that the Bronx GPO is listed in the National Register of Historic Places. The final decision advised that the Postal Service would follow the statutes contained in the National Historic Preservation Act in the connection with reuse or disposition of the property, and mural panels in the lobby painted by artists Ben Shahn and Bernarda Bryson would be preserved.”⁵

The Postal Service may argue that the “facility action” of relocating retail services from the Bronx GPO is not subject to the NHPA and that 241.4(d)(2) therefore does not apply. Indeed, the Postal Service has consistently claimed the Section 106 requirements do not apply to a relocation decision and only come into play when the building is sold. Mr. Samra’s Final Decision thus indicates that the Postal Service “may initiate consultation under Section 106 when, following the relocation of retail services from a postal facility, a potential alternative may be the sale of the property out of federal ownership.”

The Postal Service’s view of when an undertaking subject to Section 106 of the NHPA actually begins has been a matter of some controversy. The National Trust has written to the Postal Service identifying various Section 106 violations in connection with the relocation decision on the Berkeley post office,⁶ and it probably identified similar issues with the Bronx decision, but its Bronx

⁴ “Final Decision For Relocation Of Retail Services In Bronx, New York” (July 3, 2013), Included In The Postal Service’s Motion To Dismiss, Exhibit 1.

⁵ Motion of United States Postal Service to Dismiss Proceedings, regarding Bronx General Post Office (July 18, 2013).

⁶ Letter to Ms. Diana K. Alvarado, Manager, Property Management, USPS, from Brian R. Turner, Senior Field Officer/Attorney, and Elizabeth S. Merritt, Deputy General Counsel, National Trust, Sept. 28, 2012

(savethepostoffice.com/sites/default/files/National_Trust_Letter_to_USPS_re_Berkeley.pdf).

letter has not been made public by the Postal Service. Additional complaints about failures to follow NHPA and related regulations and executive orders applicable to the Bronx GPO are summarized in a letter from Ford & Huff, Attorneys at Law, on behalf of the National Post Office Collaborate.⁷

Several of the issues raised in these letters involve the issue of timing. For example, the Section 106 regulations state that one type of “adverse effect” that would trigger a Section 106 consultation process is a “change of the character of the property’s use.”⁸ Closing the post office obviously represents such a change of the property’s use, yet the Postal Service maintains it must follow Section 106 requirements only when it is selling the building. The regulations also state that federal agencies should begin the consultation process with interested parties “commencing at the early stages of project planning.”⁹ Beginning that process after a relocation decision has been made does not qualify as “the early stages.”

In his Final Decision on the Bronx GPO, Mr. Samra states that “the Postal Service does not agree that it has violated the National Historic Act,” as alleged by some of the appeals. Nonetheless, such allegations concerning the sale of historic post offices have been deemed serious enough by the USPS OIG to

⁷ Letter from Ford & Huff, on behalf of the National Post Office Collaborate, to Mr. Tom Samra, regarding the Bronx Post Office Relocation and Sale, April 10, 2013, (savethepostoffice.com/sites/default/files/Bronx%20appeal%20letter%20to%20Tom%20Samra.pdf).

⁸ 36 CFR Part 800 -- Protection of Historic Properties, section 800.5(a)(2)(iv).

⁹ 36 CFR Part 800 -- Protection of Historic Properties, section 800.1(a).

merit an audit investigation,¹⁰ now underway, and Congressman José Serrano has introduced a provision to the annual House appropriations bill calling for a suspension of sales of historic buildings until the OIG report is completed.¹¹

In order to press its claim that it has not violated the NHPA and related laws and orders, the Postal Service has gone so far as to argue that even though it has made a relocation decision, it has not made a decision to sell the building. There is a footnote in the Motion to Dismiss acknowledging that the Postal Service's March 14, 2013, announcement of its decision to relocate the Bronx GPO states, "Plans also include marketing the sale of the property." The footnote then continues: "Nevertheless, a final decision on the sale of the property has not yet been made." That can only be true in the sense that a buyer has not been found and a price agreed upon. But it is not a credible claim if the Postal Service means to say that it has not even decided whether or not to sell the building. There would have been no reason to go through a relocation procedure if the Postal Service did not at least plan to sell the building, and the Postal Service has made it clear from the very beginning that the plan is not just to relocate to a smaller space but to sell the building. As USPS real estate specialist Joseph Mulvey wrote in his letter to city officials on Dec. 31, 2012, "We believe we have an opportunity in the Bronx to sell the existing Postal Service-owned property located at 558 Grand Concourse and right-size our

¹⁰ "Disposal of Historic Properties," USPS OIG audit report, July 10, 2013 – Oct. 10, 2013 (usps.oig.gov/audit-project/13yg027sm000).

¹¹ Press release, Congressman Jose E. Serrano, July 19, 2013 (savethepostoffice.com/sites/default/files/Serrano%20provision.pdf).

retail operation into smaller leased space.”¹²

In determining whether or not to hear the appeal on the Bronx GPO, the Commission does not need to be concerned with the Postal Service’s compliance or lack of compliance with Section 106 requirements. That is an issue for another venue. The point here is simply that the relocation of retail services from the Bronx GPO is clearly part of a “facility action” that also involves the sale of the building, and by the Postal Service’s own acknowledgment, the action is subject to NHPA.

Because the facility action is subject to both the relocation regulations and the NHPA, it is one of those special cases where following the relocation procedures is not sufficient. The Postal Service must follow the requirements of the discontinuance statutes instead. As 241.4(d)(2) states: “In the event a facility action is subject to both this section, and either the NHPA or the post office discontinuance requirements, all comment periods and other public participation matters shall be governed by those statutes.”

The petitioners believe the right to appeal a decision to the Commission is one of these “other public participation matters.” The 241.4 regulations say that the facility action “shall be governed” by the discontinuance statutes, and these statutes guarantee the public the right to appeal to the Commission.

It is possible that the Postal Service will argue that even if it were required to follow the discontinuance requirements as stated in 241.4(d)(2), the passage

¹² “Postal Service Considers Sale of Bronx General Post Office,” New York Times, Feb. 1, 2013 (cityroom.blogs.nytimes.com/2013/02/01/postal-service-considers-sale-of-bronx-general-post-office/?_r=0).

does not say anything about appeals to the Commission. Perhaps the passage applies only to what the Postal Service must do, with no bearing on the Commission's obligation to hear appeals.

If that were a correct interpretation of the passage, however, it would create a serious problem. The public would have no recourse if the Postal Service failed to follow the discontinuance statutes. The Postal Service could simply ignore this requirement and close a post office under the regular relocation procedures or whatever procedures it wanted.

2. The section on “Discontinuance of post offices; historic preservation” was added to 241.4 to ensure that historic buildings would get added protection.

When the Postal Service published the Interim Rule on 241.4 in the Federal Register on May 7, 1998, it contained the following paragraph:

(d) New site or existing buildings—historic preservation. (1) It is the policy of the Postal Service, by virtue of Board of Governors Resolution No. 82–7, to comply with Section 106 of the general provisions of the National Historic Preservation Act, (16 U.S.C. 470 et seq.), Executive Order 13006, and, through it, Executive Order 12072. Therefore, when the decision is to relocate to another existing building, that building will be selected in accordance with Section 106 of the National Historic Preservation Act and applicable provisions of the executive orders identified above.¹³

The Final Rule, published in the Federal Register on September 2, 1998, revised this passage in two ways. First, the phrase “when the decision is to

¹³ Interim Rule, 39 C.F.R. Part 241, “Expansion, Relocation, Construction Of New Post Offices,” Federal Register, May 7, 1998, pp. 25166-7. (gpo.gov/fdsys/pkg/FR-1998-05-07/pdf/FR-1998-05-07.pdf)

relocate to another existing building, that building will be selected in accordance with Section 106,” etc., was revised to say, “Therefore, any facility project that will have an effect on cultural resources will be undertaken in accordance with that policy.”¹⁴

The second change was the addition of a new paragraph, 241.4(d)(2).

To quote it again:

(2) Any action involving the closing or other discontinuance of a post office shall be undertaken only in accordance with 39 U.S.C. 404(b) and 39 C.F.R. 243.1. In the event a facility action is subject to both this section, and either the NHPA or the post office discontinuance requirements, all comment periods and other public participation matters shall be governed by those statutes.

The Supplemental Information in the Final Rule helps explain why these revisions were made. Under the subtitle “National Historic Preservation Act Concerns; 241.4(d)(1),” the Postal Service notes the following:

Several respondents addressed the relationship between the Interim Rule relating to repair and maintenance projects and the relationship with the NHPA compliance process.

Three preservation groups were concerned that the language of the Interim Rule meant that the Postal Service intended not to comply with section 106 of the NHPA or that its compliance would be limited to the selection of a new building after a decision to move from an existing post office had been made. In addition, most of the respondents expressed concern that the protections offered in section 241.4(d)(1) were ‘gutted’ by section 241.4(a)(2), which exempts repairs and alterations from the rule. Nothing in the Interim Rule or this Final Rule is meant to avoid or diminish the Postal Service’s compliance with historic preservation policies. To the contrary, section 106 of the NHPA, and the applicable

¹⁴ Final Rule, 39 CFR Part 241, “Expansion, Relocation, Construction Of New Post Offices,” Federal Register, Sept. 2, 1998, pp. 46654-8.
(ribbs.usps.gov/files/fedreg/usps98/98-23377.PDF)

Executive Orders addressing downtown areas and historic buildings were mentioned in the Interim Rule specifically to emphasize that commitment.

If any project, including repair, maintenance, alteration, expansion, relocation, or new construction, will have an adverse effect under provisions of the NHPA or executive orders, the Postal Service will continue to consider and mitigate such effects independently from this rule. Accordingly, in order to prevent any misunderstanding, we have revised section 241.4(d).

As this passage explains, 241.4(d)(1) was revised to expand the scope of its application. Rather than referring only to the selection of a new building, the final version commits the Postal Service to follow Section 106 of the NHPA and the relevant executive orders for “*any facility project* that will have an effect on cultural resources” (italics added).

The Final Rule does not refer to the addition of 241.4(d)(2), but apparently that paragraph was added to the regulations for a related reason — to demonstrate the Postal Service’s commitment to downtown areas and historic buildings. The Postal Service wanted to make sure that relocation decisions involving historic properties would be subject to the stringent requirements of a discontinuance procedure rather than the more relaxed requirements of a relocation.

3. The facility action in the Bronx involves both a relocation and a discontinuance, and it is therefore subject to the discontinuance statutes.

The petitioners believe that because the facility action concerning the Bronx GPO involves both a relocation and the NHPA, it is subject to the discontinuance statutes. That in itself should be sufficient for the Commission to

reject the Postal Service's Motion to Dismiss. We believe further, however, that the Bronx GPO facility action also fits the second set of special circumstances described in 241.4(d)(2): it involves both a relocation and a discontinuance, and the Postal Service should therefore be required to follow the discontinuance statutes.

The Motion to Dismiss is based on the premise that that a facility action is either a relocation or a discontinuance, as if the two were mutually exclusive. The language of 241.4(d)(2), however, makes it clear that sometimes a facility action can involve both. When postal services are moved from one location to another, for example, one post office is closed and another is opened. The fact that retail services continue to be offered does not mean that the first post office did not close. When the post office boxes are moved, the employees are transferred to another facility, the doors are locked, and a sign is posted directing customers to other facilities, the post office has obviously closed. This is how customers view the event, and this is how it is reported in the media.

This interpretation of 214.4(d)(2) is not just a matter of common sense. In the Final Rule on 241.4, the Postal Service describes a situation where both a discontinuance and a relocation occur. The Supplementary Information contains this passage:

One state governmental office expressed concern that the interim rule does not address the consolidation or closing (i.e., the "discontinuance") of post offices. In fact, this facility project rule is independent of the criteria and requirements for closing or consolidating post offices. It 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)/[(d)] and 39 CFR 241.3. Those requirements and criteria are unchanged by this rule and will continue in full effect.

There may be instances where the facility project rule issued today governs a project that is also covered by the discontinuance rules. For example, if two post offices are both housed in substandard buildings in a rural area that has experienced significant population loss, the Postal Service may consider consolidating the post offices and relocating all operations to a single new building convenient to both affected areas. In that situation, the Postal Service would comply both with the discontinuance rules at 39 C.F.R. 243.1 (sic) 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. Where the rules prescribe different notice requirements or comment or waiting periods for a particular action, the longer one, resulting in greater public participation, would be used. Similarly, as discussed below, the requirements of section 106 of the National Historic Preservation Act (NHPA) would also continue to be applicable independently of this facility project rule.¹⁵

This passage clearly indicates that relocating a post office from one place to another involves *both* the discontinuance rules *and* a relocation decision about the new facility. In such cases, the Postal Service acknowledges, the question may arise: If two different sets of regulations are involved, which procedures should be followed? The Postal Service answers: the procedures that result in *greater public participation*, that is, the discontinuance procedures.

This paragraph further explains why the Postal Service added 241.4(d)(2) to the Final Rule. The sentence reading, “Any action involving the closing or other discontinuance of a post office shall be undertaken only in accordance with 39 U.S.C. 404(b) and 39 C.F.R. 243.1,” affirms that closures will follow the discontinuance statutes, not the relocation procedures. The passage was added to make it clear that the new procedures were not meant to “modify the scope of the rules related to the discontinuance of post offices.”

¹⁵ Final Rule, 39 CFR Part 241, “Expansion, Relocation, Construction Of New Post Offices,” Federal Register, Sept. 2, 1998, pp. 46654-8.

Thus, 241.4(d)(2) and the explanatory passage in the Final Rule associated with it show that 241.4 was never intended to reduce the community's opportunity to have input into a decision to close a post office. The Postal Service never intended for the relocation procedures to reduce the scope of the discontinuance statutes. Yet that is exactly how the Postal Service has been using the relocation regulations.

The closing of the Bronx GPO and relocation of retail services to a yet-to-be-determined location is clearly a case where one post office will be closing and a new one will be opening. The language of 241.4(d)(2) indicates that in these cases, the Postal Service should do a discontinuance procedure to close the Bronx GPO, as well as a relocation procedure to consult with the community on the new location. The discontinuance statutes guarantee the right to appeal a decision to the Commission, and for this reason, in addition to the argument concerning NHPA in section (1) above, we believe the Commission should reject the Postal Service's Motion to Dismiss.

4. The 241.4 regulations were added to the federal regulations in order to guarantee more community input when the Postal Service expands operations, not to permit less community input when the Postal Service contracts operations.

It is instructive to consider why the new rules on relocations and new construction were added to federal regulations in the first place. The Interim Rule on 241.4 begins as follows:

This interim rule establishes procedures by which the Postal Service notifies local citizens and public officials of facility projects, and solicits and considers the community's input before making a final decision to expand an existing facility, relocate to a new building, or start new construction. The purpose of the interim rule is to build into the facility project planning process specific opportunities and adequate time for the community to be a partner in the decision-making process and to have its views considered.¹⁶

The Final Rule proceeds to explain the Postal Service's priorities for facilities projects: "the first consideration is expansion of the present facility; next is relocation to another building; and last is new construction." As this language suggests, the new regulations were about getting input from the public about how the Postal Service's presence in the community should grow when current facilities became inadequate.

The Postal Service's aims in introducing 241.4 are further clarified by a look at the Community Relations Regulations handbook it published to help implement the new regulations. The handbook explains that the new section of the Code of Federal Regulations represents "a major policy change that will have a long-term impact on the way the Postal Service acquires new or expanded facilities."¹⁷ That phrase is further indication that the new regulations were about opening new facilities and expanding current facilities, not about closing them.

The handbook on the regulations contains several examples of the types of

¹⁶ Interim Rule, 39 CFR Part 241, "Expansion, Relocation, Construction Of New Post Offices," Federal Register, May 7, 1998, pp. 25166-7.

¹⁷ "Community Relations Regulations for U.S. Postal Facilities Projects," 2nd Edition, May 1999. (savethepostoffice.com/sites/default/files/USPS_Community_Relations_Regulations_on_Relocations.pdf). A more recent version can be found in the *Postal Bulletin*, (May 26, 2005) (<http://about.usps.com/postal-bulletin/2005/html/pb22155/kitt10.html>).

changes covered by the new regulations as well as examples of letters to be sent to the community. One is about expanding an existing facility, another is about relocating because the current facility cannot be expanded, a third is about moving carriers to a new location while keeping the retail services in place, a fourth informs the community about potential new locations for a post office or carrier annex, and a fifth informs the community about the new location that has been chosen.

None of the examples in the handbook is about closing a post office. None of them is about the need to relocate because the existing space is too big and the Postal Service needs to save money — the reasons now cited for the Bronx GPO relocation. The entire orientation of the new guidelines is about expansion, not contraction.

That is an important distinction. It makes sense that the requirements of 241.4 would be less stringent than the discontinuance requirements of 241.3. Expanding a facility or relocating to a bigger one or building a new one is, generally speaking, an improvement, and such actions are much less likely to provoke opposition and the need to consider alternatives than the closing of a post office, which nearly always means a degradation of services. That is why the requirements of 241.4 are less stringent than 241.3.

The Interim and Final Rule, the Community Relations Regulations handbook, and the text of 241.4 all make it clear that the Postal Service never intended for the relocation procedures to be used when the facility action was something as significant as the closure of a historic downtown building like the

Bronx GPO.

5. The previous orders cited by the Postal Service in its Motion to Dismiss are not relevant to the present case.

The Postal Service bases its Motion to Dismiss on several previous Commission orders dismissing appeals that involve relocations and “rearrangements” of retail facilities in a community. Though similar in some respects to the facility action in the Bronx, none of them is sufficiently analogous to serve as a firm foundation on which to base a decision on the Bronx appeal.

Two of the key orders dismissing appeals, *Oceana*¹⁸ and *Wellfleet*¹⁹ — the orders on which all subsequent decisions were based — were issued *before* 241.4 was added to the Code of Federal Regulations. In these cases, the Postal Service could not claim to be following the requirements of 241.4 because the section did not exist yet.

Most of the other cases that followed *Oceana* and *Wellfleet* did not involve a relocation subject to 241.4 *and* a historic property subject to NHPA, so these cases are not germane to the present case.

In *Steamboat Springs, Colorado*,²⁰ for example, the Postal Service never claimed that the facility action was a relocation under 241.4, and the post office was not housed in a historic property. In the Notice it filed with the Commission,

¹⁸ Order No. 436, PRC Docket No. A82-10, *Oceana Station, Virginia Beach, Virginia* (June 25, 1982).

¹⁹ Order No. 696, PRC Docket No. A86-13, *Wellfleet, Massachusetts* (June 10, 1986).

²⁰ Order No. 448, PRC Docket No. A2010-2, *Sundance Post Office, Steamboat Springs, Colorado* (April 27, 2010).

the Postal Service stated that while the office was suspended, no final decision had been made to close it, and if the Postal Service were to issue a final determination, the appeal would fall outside of 404(d) because the post office was a station, not because it was an action subject to 241.4.

In *East Elko, Nevada*,²¹ the Postal Service never claimed to be following the requirements of 241.4. In Comments filed with the Commission, the Postal Service did argue at length that the appeal should be dismissed because the office was a station or branch, not an independent post office, but the Commission rejected that argument. Neither the Postal Service's Comments nor the Commission's order dismissing the appeal makes any reference to 241.4. *East Elko* thus did not involve both a relocation under 214.4 and a historic property subject to NHPA, so it is not relevant to the present case.

The only previous orders that could have any possible bearing on the case of the Bronx GPO are those in which the Postal Service classified the facility action as a relocation under 241.4 and the post office was a historic property subject to the NHPA: Ukiah,²² Venice,²³ and Santa Monica.²⁴ In these three cases, however, the petitioners did not make reference to 241.4(d)(2) to support their arguments that the Postal Service had failed to follow the requirements of 404(d) and 241.3. Moreover, in explaining its orders to dismiss,

²¹ Order No. 477, PRC Docket No. A2010-3, *East Elko Station, Elko, Nevada*, (June 22, 2010).

²² Order No. 804, PRC Docket No. A2011-21, *Ukiah Main Post Office, Ukiah, California* (August 15, 2011).

²³ Order No. 1166, PRC Docket No. A2012-17, *Venice Post Office, Venice, California* (January 24, 2012).

²⁴ Order No. 1588, PRC Docket No. A2013-1, *Santa Monica Main Post Office, Santa Monica, California* (August 15, 2012).

the Commission relied only on its previous orders (e.g., *Ecorse* in the case of Ukiah; *Oceana* “and its progeny” in the case of Venice), and did not address the issues raised by 241.4(d)(2).

It is unfortunate that in these three cases the petitioners and the Commission failed to take note of 241.4(d)(2), but that failure should not count against the petitioners in the case of the Bronx GPO. The previous orders issued by the Commission, which are the substance of the Postal Service’s argument, do not inform a reading of 241.4(d)(2), and they are not relevant to this case. At this point, there is no precedent for dismissing an appeal when the facility action satisfies the conditions described in 241.4(d)(2), i.e., it is subject to both 241.4 “and either the NHPA or the post office discontinuance requirements.” The decision to relocate services from the Bronx GPO and sell the building clearly fits these circumstances, and the Motion to Dismiss should be rejected on those grounds.

6. The previous orders cited by the Motion to Dismiss show how overly expansive the view of what is outside the jurisdiction of the Commission has become.

The sequence of Commission orders discussed in the Motion to Dismiss does not justify dismissing the appeal, but it does do something else. It shows what a slippery slope the Postal Service and the Commission have put us on. Each decision dismissing an appeal adds momentum to a trend toward reducing

the opportunity to appeal to the Commission, and that in turn reduces the obligation of the Postal Service to follow the discontinuance requirements.

The *Oceana Station* decision essentially said that it was permissible to close a post office and open a new one in the same community without going through a discontinuance procedure. While it may have seemed reasonable at the time, in retrospect the Commission's decision on *Oceana* is very troubling. The Commission basically took it upon itself to interpret 404(d) in such a way that a "closure" may not always be a "closure." As the *Oceana* order put it, "Because of the implicit tension between the goals of economical operation and comprehensive community service, we must avoid undue literalism in construing section 404(b) [now (d)]. A rule of reason, rather than an approach which either ignores the relevant facts of the case or adheres to an extreme or mechanical interpretation of the word 'close', is needed."

It is hard to imagine that the legislators who crafted 404(d) ever thought that lawyers would end up parsing the meaning of "closure" and arguing that sometimes when the doors of a post office close and the flag comes down, the post office has not really "closed," and the legislation they wrote concerning closures does not apply. The *Oceana* order unnecessarily introduced ambiguity into what should have been a very clear matter: the post office is open or it's not. *Oceana* thus opened the door to all manner of argument and interpretation about what it means to "close" a post office.

Four years after *Oceana* came *Wellfleet*, which broadened the meaning of "community" to include a neighboring village. *Wellfleet* made it possible for

the Postal Service to close a post office in one village and open one in another, and then claim that the closure was outside the scope of 404(d).

Two years after *Wellfleet*, the Postal Service added 241.4 to the Code of Federal Regulations. The Final Rule and the 241.4(d)(2) show that the Postal Service understood “relocation” in such a way that when a relocation also involves closing a post office, the Postal Service must go through a discontinuance procedure. The addition of 241.4 to the Code of Federal Regulations should therefore have put an end to any further orders by the Commission dismissing appeals on closures that were part of relocations or rearrangements, but instead the scope of what is outside of 404(d) continued to expand.

Wellfleet was followed by *Birmingham Green, Alabama*.²⁵ In this case, the Postal Service closed a station and told customers to use the main post office. There was no “relocation” from one building to a new one, as described in 214.4; instead, the Postal Service said it had plans to open a contract postal unit. The Commission dismissed the appeal, citing *Oceana* and explaining that closing the Birmingham Green station was “part of a rearrangement of the retail network serving the Birmingham community,” and therefore not subject to 404(d). It is worth noting that in 2011 the Postal Service redefined “consolidation” to refer to “when a Postal Service–operated retail facility is

²⁵ Order No. 1387, Docket No. A2003-1, *Birmingham Green, Alabama* (December 3, 2003).

replaced with a contractor-operated retail facility.”²⁶ Under the new regulations, then, replacing Birmingham Green Station with a contract postal unit would have been a consolidation under 404(d) and the decision would have been available for appeal to the Commission.

The scope of what kind of closures can occur outside the scope of 404(d) continued to expand with the orders on *East Elko, Nevada*,²⁷ and *Pimmit, Virginia*,²⁸ two cases where no new post office was created to replace the one that closed. The Postal Service closed the post office in East Elko and told customers to use the main post office. In *East Elko*, the Commission dismissed this appeal on the grounds that customers were not losing access to postal services because the main post office was in “close proximity” to the one that closed. The *East Elko* decision thus expanded the scope of “rearrangement of retail services” to encompass a situation where there were no plans to create a new retail facility so long as another post office was in “close proximity” to the one that closed.

In the Pimmit case, two post offices closed (Falls Church Main Post Office and Pimmit Branch), and a new one opened (Falls Church Finance Station), a few blocks from the main post office. The Postal Service conducted a full discontinuance study on the Pimmit Branch and issued a Final Determination to close it. In Comments submitted to the Commission in

²⁶ Handbook PO-101 Revision: Management of Post Offices by Postmasters; Definition of Consolidation (about.usps.com/postal-bulletin/2011/pb22325/html/updt_010.htm)

²⁷ Order No. 477, PRC Docket No. A2010-3, *East Elko Station, Elko, Nevada*, (June 22, 2010).

²⁸ Order No. 1159, Docket No. A2011-90, *Pimmit Branch, Falls Church, Virginia* (Jan. 20, 2012).

response to the appeal, the Postal Service argued that the case was outside of the Commission's jurisdiction because Pimmit was a branch, but it never cited 241.4 or mentioned "relocation" or "rearrangement."²⁹ Nonetheless, in *Pimmit*, the Commission dismissed the appeal because it viewed the closure as part of a "rearrangement of retail facilities."

Since Oceana in 1982, the Commission has issued about a dozen orders dismissing appeals because they involved relocations or were part of a "rearrangement of retail services" or simply because there was another post office in "close proximity." These orders have made it much easier for the Postal Service to close post offices without following the discontinuance requirements. If there is not going to be a review by the Commission, the Postal Service has little incentive to concern itself with legal requirements, and the public has no recourse to challenge decisions that are "arbitrary" or "capricious" or that show "an abuse of discretion" or that are "without observance of procedure required by law" or that are "unsupported by substantial evidence on the record."³⁰

7. The Postal Service would expand the notions of "relocation" and "rearrangement" to the point where almost any post office closure could be considered outside the scope of 404(d).

Two good examples of where things are headed can be seen in the

²⁹ Comments of United States Postal Service, Nov. 21, 2011, Docket No. A2011-90, *Pimmit Branch, Falls Church, Virginia*.

³⁰ 39 U.S.C. 404(d)(5)

Postal Service's comments on the Commission's revision of its rules on the appeals process last year and in the appeal on the Glenoaks post office, now before the Commission.

When the Commission was revising its regulations on appeals in 2012, it decided to add a sentence codifying its practice of dismissing appeals on relocations. But the Commission could not even come up with a definition for "relocation" that satisfied the stakeholders, and it had to defer the matter. The new regulations now state that the rules on appeals do not apply when the Postal Service relocates a post office within a community — without defining what a relocation is.

The Commission had proposed what it must have considered a commonsense definition: "*Relocate* means that 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."³¹

The Postal Service argued that the definition was "too narrow." In its comments to the Commission, the Postal Service wrote:

Relocation concerns the transfer of service access within a community, thus replicating all service access previously available or meeting local demand for service in the community suffices; the number of brick and mortar facilities used to provide service within a community is not dispositive of whether a relocation has occurred. Accordingly, the proposed rule's inclusion of language regarding the number of Post Offices within a community should be omitted.³²

Under the Postal Service's proposed definition, virtually any post office could be

³¹ Order No. 814, Rules Applicable to Appeals of Post Office Closings (August 18, 2011), Docket No. RM2011-13

³² Initial Comments of The United States Postal Service (October 3, 2011), Rules Applicable to Appeals of Post Office Closings, Docket No. RM2011-13

closed without going through a discontinuance procedure and without concern for review by the Commission. The Postal Service could simply say that it is *transferring* services to an existing post office elsewhere in the community. The fact that there is one less post office in the community would not be relevant.

Before the Commission at this moment is an appeal on the Glenoaks Station in Burbank, California (Docket A2013-5). In this case, the Postal Service wants to close the Glenoaks post office, and it has directed customers to other post offices in Burbank and several alternative retail access points. Even though no new post office is opening to replace the Glenoaks Station and no other facility actions are taking place in Burbank, the Postal Service's Motion to Dismiss argues that the appeal involves a "rearrangement of retail facilities" and therefore falls outside of 404(d).

The Public Representative has filed a Response to the Motion to Dismiss. She endorses the Postal Service's view that the closure of the Glenoaks post office is part of "a consolidation or rearrangement of postal services within a community, a matter outside the appellate jurisdiction of the Commission."³³ The closure of the Glenoaks post office, however, is not a "consolidation," in either the older meaning of the term (converting an independent post office into a station or branch) or the newer definition (replacing a post office with a contract postal unit). As for the closure of the Glenoaks post office being part of a "rearrangement," the only "rearranging" going on in Burbank is that the Glenoaks post office is closing.

³³ Public Representative Response to United States Postal Service Motion to Dismiss Proceedings, Glenoaks Station Post Office, Burbank, California (July 23, 2013)

The Motion to Dismiss the Glenoaks appeal also argues that there are other post offices in “close proximity” to the Glenoaks Station, so customers are not losing access to postal services. The Public Representative agrees with the Postal Service. This argument is highly problematic. None of the statutes and regulations concerning post office closures says anything about the distance to another post office, and for good reason. “Close proximity” is a subjective term and relative to the circumstances. 39 U.S.C. 404(d) consequently does not say, “The Postal Service, in making a determination whether or not to close or consolidate a post office *that is not in close proximity to another* - (A) shall consider - (i) the effect of such closing or consolidation on the community served by such post office,” etc.

According to the views expressed by the Postal Service and Public Representative on the Glenoaks Station, the closing of virtually any post office, particularly in a metropolitan area, can be seen as a part of such a “rearrangement” and hence “outside the appellate jurisdiction of the Commission.” The Postal Service can always claim that there are other post offices in “close proximity” and that customers will continue to have access to a post office.

To treat all such closings as outside the scope of 404(d) essentially means that the Commission’s long-held view that closing decisions on stations and branches can be appealed will become irrelevant. Instead of arguing that an appeal should be dismissed because the facility is a station or branch, the Postal Service can say the closure is part of a rearrangement of retail services,

as it has done with Glenoaks. After decades of rejecting the Postal Service's argument on stations and branches, the Commission appears poised to give the Postal Service what it has been arguing for. Appeals will be dismissed not because the office being closed is a station or branch, but because it is in close proximity to another post office and because customers will continue to have access to postal services somewhere.

Dismissing appeals on the grounds that the closure involves a relocation or rearrangement, even when no new facility is opening and the only rearrangement is the closure itself, or because another post office is in "close proximity," does not simply remove a community's opportunity to have a decision reviewed by the Commission. It also allows the Postal Service to close post offices without even bothering to go through a discontinuance procedure. As we have seen in Ukiah, Venice, Santa Monica, La Jolla, Berkeley, and the Bronx, the Postal Service can dispense with 404(d) and 241.3 completely and claim the closure is a relocation. It is not even necessary for the Postal Service to open a new post office to replace the one that closes. The Postal Service can say the closure is simply part of a "rearrangement of retail services," even if the only rearranging that occurs is closing the post office

As the range of closures considered outside the scope of 404(d) grows wider and wider, and as the precedents of Commission orders dismissing appeals mount, it becomes increasingly difficult for communities to be heard. The Postal Service loses credibility, and the procedures used to close post offices lose any claim to legitimacy.

When Senator Jennings Randolph of West Virginia proposed the legislation that would become 404(d), he was concerned not just about the closing of post offices. He also objected to the decision of the Postal Service to “create branches out of many post offices close to large cities” because they would then be administered by postmasters with little or no involvement with the community.³⁴ Such a “consolidation” was therefore included in the language of 39 U.S.C. 404(d).

Considering that Congress required the Postal Service to conduct a full discontinuance procedure just to change how a small rural post office was administered, it is impossible to imagine that Congress ever intended that the main post office of a large city like the Bronx GPO could be closed without going through the same discontinuance procedure.

The Postal Service’s argument in the Motion to Dismiss the Bronx GPO appeal relies on a sequence of Commission orders dismissing previous appeals that it considers “analogous.” As explained above, for a variety of reasons, these previous orders are not sufficiently analogous to the case of the Bronx GPO: some were issued before 241.4 was added to the Code of Federal Regulations; some involved closings that the Postal Service never characterized as relocations under 241.4; some did not involve historic properties; and in none of them did the petitioners or the Commission make reference to 241.4(d)(2).

When the Postal Service added 241.4 on relocations and expansions to

³⁴ As quoted in Knapp v. USPS, Jan. 12., 1978 (mi.findacase.com/research/wfrmDocViewer.aspx/xq/fac.19780112_0000003.EMI.htm/gx).

the Code of Federal Regulations, it gave no indication that it intended for these regulations to replace the discontinuance requirements. As explained above, there is ample evidence that it wanted to reassure everyone that it would continue to follow the discontinuance statutes when it closed a post office. These statutes give individuals the right to appeal to the Commission.

If the Commission were to dismiss the appeal on the Bronx GPO, it would not be following precedents; it would create a new precedent, and it would further expand the range of facility actions considered outside the scope of 404(d). In the end, the public will come out the loser: it will lose its right to appeal to the Commission, and there will be nothing to prevent the Postal Service from closing post offices without following any regulations at all.

8. The Postal Service should be required to produce the Administrative Record on the Bronx facility action; the Record will demonstrate that the Postal Service has failed to comply with C.F.R. 241.3 and U.S.C. 404(d).

At this point, the Postal Service has not made the Administrative Record on the Bronx GPO decision available to the public. We believe that the Record will show convincingly that the Postal Service has not fulfilled the requirements of 404(d) or 241.3. Indeed, the Postal Service does not even claim to have fulfilled these requirements since it argues that only 241.4 is relevant to the situation.

The Motion to Dismiss reviews the procedures that the Postal Service followed in deciding to close the Bronx GPO and relocate retail services

elsewhere. The details demonstrate that the Postal Service did not follow the notification and comment procedures required for a discontinuance. For example, the announcement of the proposed relocation was done by posting a notice in the lobby of the Bronx GPO and a notice in the *New York Post* about the forthcoming public meeting. As a result, many people did not even know there would be a public meeting, and attendance was sparse. The regulations require a much more vigorous effort to notify customers of a discontinuance study. Notices are not just placed in the lobby; they are also sent to customers, along with a questionnaire for feedback.

According to the Motion to Dismiss, a meeting with elected officials was held on February 5, and the public was given 30 days, until March 5, to submit written comments. In a discontinuance procedure, the public has 60 days to submit comments.

Mr. Samra assures the people of the Bronx that all the proper regulations inviting community input were followed, but following the requirements of 241.4 was insufficient in this case. Section 241.4(d)(2) was added to the Final Rule in order to ensure there would be more opportunity for input on decisions involving the closing of a post office, especially one housed in a historic building. If the Postal Service had followed the discontinuance process, it would have perhaps avoided provoking this angry response from the Bronx Borough President and seventeen other elected officials in the Bronx:

We are appalled that, despite requests for further community consultative processes at that hearing, the United States Postal Service has seen fit to issue a final sale determination, rather than pursue engagement with community stakeholders, including elected officials.

In, fact the Postal Service seems to have taken the opposite approach. At the February hearing, the United States Postal Service was unable to demonstrate that a community consultative process had been instituted as part of the community notification process. Moreover, the United States Postal Service's subsequent refusal to host an evening hearing in the community or accept comments on this proposal via electronic means, when taken together, seem designed to minimize public input during this important process.³⁵

There are many other ways the Postal Service did not follow the discontinuance procedures. The Postal Service did not initiate a feasibility study, and it has provided no explanation of the circumstances justifying a discontinuance. 404(d) requires the Postal Service to consider the effect of the closure on postal employees. Mr. Samra's Final Decision does not even refer to employees. When the Postal Service issued its decision to close the Bronx GPO, it did not inform the public that under the discontinuance guidelines, customers have the right to appeal the decision to the Commission. Instead, customers were directed to send appeals to the Vice President, Facilities, which would be appropriate for some of the facility actions described in 241.4, but not one that involves a relocation *and* a discontinuance or the NHPA.

The only documents that the Postal Service has submitted to the Commission thus far are Mr. Samra's Final Decision (Exhibit 1) and a page from the USPS.com "Find Locations" website showing the proximity to the Bronx

³⁵ Letter to USPS Vice President, Facilities, regarding Bronx General Post Office, April 1, 2013, signed by Bronx Borough President Rubin Diaz, Jr., and seventeen other elected officials (bronxboropres.nyc.gov/pdf/2013-04-02-post-office-letter.pdf).

GPO of other post offices and alternate retail access points (Exhibit 2).³⁶ Mr. Samra's Final Decision summarizes the appeals letters that were submitted to him, but the letters themselves are not included. It is impossible to determine whether or not he has given the comments a fair reading and response.

The page showing distances to other facilities is also a problem. In its Motion to Dismiss, the Postal Service states, "There are eight other Postal Service-operated retail facilities within one mile of the Bronx GPO. See Exhibit 2 (printout from www.usps.com)." The distances listed on the printout, however, are "as the crow flies." When one looks at the actual directions, whether on foot, driving, or using public transportation, all of the distances are actually greater than the page from USPS.com shows, and most of them are more, not less, than one mile. (This is true whether one checks for distances on Google Maps or on the usps.com website. If one asks for actual directions on usps.com, the distances are not the same as on the printout page of Exhibit 2.) The following table shows the actual distances compared to those shown on Exhibit 2.

³⁶ Motion Of United States Postal Service To Dismiss Proceedings (July 18, 2013), Regarding The Bronx General Post Office, Bronx, NY 10451, PRC Docket No. A2013-6, Exhibits 1 and 2.

Distances from Bronx GPO at 558 Grand Concourse, Bronx, NY 10451 (as shown on Google Maps)					
Post Office	Address	Exhibit 2 (miles)	Car (miles)	Foot (miles)	Walking time (mins.)
Lincolnton	2266 5th Ave New York, NY 10037	0.6	0.8-1.1	0.8-0.9	17
Stadium	901 Gerard Ave Frnt 1 Bronx, NY 10452	0.7	0.8	0.7-0.8	14
Colonial Park	99 Macombs Pl New York, NY 10039	0.8	1.4	1.0-1.3	21-25
Hamilton Grange Annex	99 Macombs Pl New York, NY 10039	0.8	1.4	1.0-1.3	21-25
Melcourt	860 Melrose Ave Frnt 2 Bronx, NY 10451	0.8	1.0-1.3	1.0	19
College Station	217 W 140th St New York, NY 10030	0.8	1.3-2.2	1.1-1.3	21-28
Hub	633 Saint Anns Ave Bronx, NY 10455	0.8	1.2-1.9	0.9-1.0	18-20
Mott Haven	517 E 139th St Bronx, NY 10454	0.9	1.4-1.8	1.2	23

These post offices are not only further from the Bronx GPO than the Postal Service suggests — some of them are virtually impossible to get to as a pedestrian. In order to travel to four of the eight alternatives — Lincolnton, College Station, Colonial Park, and Hamilton Grange (the latter two are at the same address) — one must find a way to go over or under two major highways, the Harlem River Drive and the Major Deagan Expressway, as well as crossing the Harlem River on the Madison Avenue Bridge or the 145th Street Bridge. It is impossible to imagine one would walk these perilous routes to do business at one of these post offices. The range of alternative post offices to the Bronx GPO is thus much less extensive than the Postal Service claims, and “within one mile” turns out to mean a 20- or 25-minute walk. These examples of what

the Postal Service considers reasonable alternatives to the Bronx GPO should also demonstrate why claiming that a particular closure is outside the scope of 404(d) because there are other post offices in “close proximity” is fraught with problems.

The two exhibits submitted to the Commission are totally inadequate as evidence that the Postal Service has fulfilled the requirements of 404(d) and 241.3. Of course, that is not surprising, since the Postal Service does not even claim to have fulfilled these requirements.

9. The Public Representative’s Response in Support of the Postal Service’s Motion to Dismiss does not support the public, but it does raise some important issues.

Since the Public Representative has deemed fit to write in support of the Postal Service’s Motion, we will conclude by addressing his comments.

The Public Representative states, “It is well settled that Commission jurisdiction arises only where, the Postal Service’s action constitutes either a ‘closing’ or a ‘consolidation.’ If the action is to relocate a post office, the Commission does not have authority to consider the merits of the appeal.”³⁷ He then proceeds to cite the same Commission orders cited by the Postal Service in the Motion to Dismiss — *Oceana, Wellfleet, Sundance, Ukiah*, etc.

The Public Representative then observes, “These decisions support the

³⁷ Public Representative Response in Support of United States Postal Service Motion to Dismiss Proceedings, July 24, 2013, regarding the Bronx General Post Office, PRC Docket No. A2013-6.

conclusion that the relocation of retail services or rearrangement of retail facilities within a community does not constitute a closing or a consolidation — a prerequisite for an appeal under Section 404(d). Of particular significance is that in at least two decisions the Commission emphasized customers would continue to have the same level of access to retail services in the community.”

As explained above, these previous decisions are not relevant to the current case. In every one of them, neither the petitioner nor the Commission addressed 241.4(d)(2) and the explanatory material in the Final Rule on 241.4. Had the passages discussed in this Reply been examined, it would have become clear that some of the facility actions covered by 241.4 are subject to the discontinuance statutes, hence available for appeal to the Commission.

The Public Representative does manage to introduce a new twist to the case of the Bronx GPO, however. As he quite rightly points out, the Postal Service has said that it plans to open a new post office in the Bronx, which is its justification for calling the facility action a “relocation,” but there is the possibility that the Postal Service will not follow through on its plan and fail to open a new facility after all. If that were to happen, states the Public Representative, the relocation plan “could become a consolidation,” and “depending upon the factual circumstances, the cessation of operations at the Bronx GPO might be deemed grounds for appeal of a post office closing.”³⁸

This is somewhat confusing. First, the Public Representative defines a

³⁸ Public Representative Response in Support of United States Postal Service Motion to Dismiss Proceedings, July 24, 2013, regarding the Bronx General Post Office, PRC Docket No. A2013-6.

“consolidation” as “a change in the management structure of a post office which includes the elimination of the postmaster position.” The citation for this definition is the *Wellfleet* order, which was issued in 1986. That was back when a consolidation referred to turning an independent post office into a subordinate station or branch, which meant eliminating the postmaster position. As noted above, the definition of “consolidation” was changed in 2011, and it now refers to “when a Postal Service–operated retail facility is replaced with a contractor–operated retail facility.”³⁹ If the Postal Service were to close the Bronx GPO and direct customers to another post office in the Bronx, it would not constitute a “consolidation” according to current USPS regulations. That matter of vocabulary aside, it is important to note the view of the Public Representative that if no new post office opens to replace the Bronx GPO, there would be grounds for an appeal under 404(d).

That view does not seem consistent with the Postal Service’s interpretation of the Commission orders it cites in its Motion to Dismiss. For example, the Postal Service closed East Elko, Nevada, and did not replace it with a new facility. Customers were simply told to use the main post office. The Commission nonetheless viewed the closure as a “rearrangement” and dismissed the appeal.

The Public Representative’s comment also does not seem consistent with what another Public Representative had to say about the Glenoaks appeal; as noted above, she takes the position that transferring retail services from a post

³⁹ Handbook PO-101 Revision: Management of Post Offices by Postmasters; Definition of Consolidation (about.usps.com/postal-bulletin/2011/pb22325/html/updt_010.htm)

office that is closing to others that currently operate is “is a consolidation or rearrangement of postal services within a community, a matter outside the appellate jurisdiction of the Commission.”⁴⁰

The two Public Representatives seem to have a different view of the law. According to the Public Representative who filed the Response on Glenoaks, the Postal Service can close Glenoaks Station and tell customers to use other post offices, and that is a matter outside the jurisdiction of the Commission. According to the Public Representative who filed the Response on the Bronx GPO, if the Postal Service failed to open a new post office to replace the Bronx GPO and simply told customers to use another post office, it would be a matter for appeal under 404(d). Apparently even the Public Representatives do not agree on what kind of closing falls within the scope of 404(d). This should not be surprising, given that the Postal Service, the Commission, and other stakeholders cannot even agree on what “relocation” means. “Rearrangement” is even more ambiguous.

In his Response to the Motion to Dismiss the appeal on the Bronx GPO, the Public Representative proceeds to review the process the Postal Service went through in making its decision to relocate retail services from the Bronx GPO. The details of what the Postal Service did or did not do are largely irrelevant. The Postal Service clearly did not follow the requirements of 404(d) and 241.3, as it was required to do by 241.4(d)(2).

⁴⁰ Public Representative Response to United States Postal Service Motion to Dismiss Proceedings, Glenoaks Station Post Office, Burbank, California (July 23, 2013)

All in all, the Public Representative's comments add little to the argument made in the Motion to Dismiss, but they undoubtedly make it more likely that the Commission will dismiss the Bronx appeal. That is unfortunate.

As stated on the PRC website, the Public Representative is charged with representing the interests of the general public: "The PR represents the general public as a whole, and particularly those groups who do not have or cannot feasibly acquire representation. In so doing, the PR is able to give weight to various and sometimes disparate voices and can help illustrate the impact of a particular decision."⁴¹ It is hard to see what public the Public Representative represented when he issued his Response supporting the Postal Service's Motion to Dismiss. His Response works *against* the interests of the public as expressed through the appeals.

That the Public Representative should support the Postal Service's Motion to Dismiss is disappointing, but we believe his argument, like that of the Postal Service, is not persuasive. It can be useful to examine previous orders by the Commission, but they are only part of the story.

The text of 241.4, along with the interpretive assistance provided by the Rules and handbook associated with it, makes it clear that a historic post office like the Bronx GPO cannot be closed simply by following the relocation procedures. The Postal Service should have followed the requirements described in the discontinuance statutes, which include the public's right to appeal to the Commission. We therefore respectfully encourage the

⁴¹ About the Public Representative, PRC website (prc.gov/prc-pages/about/PR.aspx?section=publicreprole).

Commission to reject the Motion to Dismiss and hear the appeal on the Postal Service's decision to close the Bronx General Post Office.

The petitioners believe that if the Commission will permit this appeal to go forward, sufficient evidence will be produced to justify a remand. In the end, the Postal Service would be required to go through a proper discontinuance procedure. This will not prevent the Postal Service from deciding to close the Bronx GPO and proceeding to sell the historic building, but it would give the people of the Bronx a greater opportunity to have their voices heard than they have been given thus far. It might also give the process more legitimacy than it can now claim.

Respectfully submitted on behalf of
Petitioners Lizette Colon, Julio Pabon, and
Mike Eilenfeldt⁴²

s/ Steve Hutkins

Steve Hutkins
PO Box 43
Rhinecliff, New York 12574
admin@savethepostoffice.com

⁴² Petitions For Review Regarding Bronx General Post Office, Bronx, NY 10451, PRC Docket No. A2013-6, were submitted by Steve Hutkins (July 3, 2013); Lizette Colon (July 9, 2013); Mike Eilenfeldt (July 9, 2013); and Julio Pabón (July 9, 2013).