

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

In the Matter of:)
Observatory Finance Station) Docket No. A2006-1
Pittsburgh, PA 15214-0651)
(Observatory Hill Inc., Petitioner))

UNITED STATES POSTAL SERVICE
MOTION TO DISMISS PROCEEDING

On June 21, 2006, Petitioner filed with the Postal Rate Commission (Commission) a “Petition for Review”, with supporting documents, contesting the closing of the Observatory Finance Station (Petition). The Commission responded by issuing Order No. 1469, *Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. § 404(b)(5)*. That Order specified July 6, 2006, as the date on which the Postal Service was to file with the Commission the administrative record underlying the claimed decision to close the Observatory Finance Station (“Observatory Station”). On July 6, 2006, the Postal Service filed a notice stating that because Observatory Station is not an independent post office managed by a postmaster, but rather a classified station of the Pittsburgh Main Post Office, the Postal Service did not create an administrative record compliant with the regulations for closing post offices, 39 C.F.R. § 241.3. The notice also stated that the Postal Service would be filing a motion to dismiss proceedings on July 21, 2006, based on the Commission’s lack of jurisdiction to consider closing or consolidation of subordinate facilities under the management control of an independent post office. That self-imposed deadline proved impossible to meet because of the concurrent need for counsel to address the flood of discovery filed in Docket No. R2006-1 at the close of the initial discovery period regarding the Postal Service’s case-in-chief.

The Postal Service respectfully submits that the Petition does not fall within the Commission's jurisdiction under 39 U.S.C. § 404(b)(5). Observatory Station was a Classified Postal Station, not a Post Office. *Postal Bulletin* 22185 (July 20, 2006).¹ As shown in the *Postal Bulletin*, Observatory Station was a Classified Station under the management of the Pittsburgh Post Office. The services formally provided by Observatory Station are now being provided by Kilbuck Finance Station,² another Classified Station under the management of the Pittsburgh Post Office. Kilbuck Finance Station is open more hours, offers 24-hour lobby service with an Automated Postal Center, and is located approximately three miles away from Observatory Station. Additionally, there are two other postal facilities located approximately three miles from Observatory Station, which are also open more hours.

Though Observatory Station was a Classified Station, it seems that local postal officials incorrectly attempted to apply formal Post Office discontinuance procedures.³ Though this was a mistake on the Postal Service's part, it allowed the customers of Observatory Station far more opportunity to express their concerns regarding the station's closing – and to have the Postal Service respond to those concerns -- than would ordinarily occur. The most significant drawback of misapplying the procedures was that customers were told that a right of appeal

¹ See Attachment 1. The Attachment identifies the Observatory Finance Unit as a Classified Station within the larger Pittsburgh Post Office that serves the entire Pittsburgh community.

² Kilbuck Finance Station is also known as the "General Mail Facility".

³ Misapplication of the discontinuance procedures meant that some of the documents typically created during a discontinuance study did get used. As noticed by the Postal Service to the Commission on the date set for the filing of an administrative record in Docket No. A2006-1, however, no administrative record that complies with the mandates of 39 CFR § 241.3 was created. This is confirmed by the statements in the Petition indicating that no final determination was posted – by that time field officials had become aware that the discontinuance procedures were not applicable to Observatory Station. Some of the discussion that follows relies – for illustrative purposes only – on some of those documents. The jurisdictional facts pertinent to this proceeding are established by Attachment 1 of which the Commission is entitled to take judicial notice.

existed, although it was often characterized as a right of appeal to Postal Service headquarters rather than the Commission.

Before finalizing a closure of Observatory Station, the Postal Service actively sought input from Observatory's customers regarding the possible change in service. A questionnaire was distributed to in early March, 2005, to each and every one of Observatory Station's box customers, and copies were available at the retail counter for Observatory Station's walk-in customers. A public community meeting was held on May 5, 2005 to discuss the closure. Finally, the Postal Service publicly posted the proposal for closure, and invited customer comments, from July 11, 2005, through September 9, 2005. As a general matter, the Postal Service responded to customers' expressions of concern elicited by the questionnaires, and customers expressed appreciation for the responses. Examples included establishment of new carrier delivery procedures for the observatory itself, the extended hours of operation and 24-hour access to Post Office boxes at Kilbuck Station, and newfound awareness of Stamps By Mail and by telephone.

The Postal Service respectfully submits that the Petition does not fall within the Commission's jurisdiction under 39 U.S.C. § 404(b)(5), for Observatory Station was a Classified Station, not a Post Office. The services provided formerly provided by Observatory Station are now being provided by nearby facilities, which can offer Observatory Station's former customers more hours than they received before, and through alternate channels for access to postal services including consignees, telephone and mail (for stamps) plus the myriad of services available through the USPS.com website. Accordingly, this proceeding should be dismissed.⁴

⁴ It has been the Commission's consistent practice to send a form letter in response to an attempt to appeal the closing of a station or branch, advising the petitioner of the Commission's lack of

SUMMARY OF THE POSTAL SERVICE POSITION

Under 39 U.S.C. § 404(a)(3), the Postal Service has the authority to "determine the need for post offices, postal . . . facilities and equipment," and under 404(b) must observe certain procedures before "making a determination . . . as to the necessity for the closing or consolidation of any post office" The Postal Service view, which has remained consistent since section 404(b) was enacted, is that the procedures mandated by 404(b) apply only to the closing or consolidation of an independent post office, which is a facility occupied and immediately supervised by a postmaster, and not the closing or consolidation of a station, branch, contract unit, or other subordinate facility under the administrative supervision of a post office. This conclusion is based upon the following:

Congress knowingly used the term "post office" in section 404(b) in its precise sense just as it has consistently used the term in that sense for more than a century; the floor debates show that Congress sought to address a problem shared by rural postal customers by aiming only at independent post offices; it considered and rejected both narrower and broader scopes for what became 404(b); and the conference report on the reconciliation of the House and Senate versions confirms Congress' specific intent to limit the application of 404(b) to independent post offices.

Federal court decisions apply 404(b) only to independent post offices headed by a postmaster and not to facilities such as stations, branches, community post offices, or other contract postal units under the administrative control of an independent post office.

jurisdiction in such matters. The Commission evidently did not follow that procedure in this docket.

ARGUMENT

I. CONGRESS KNOWINGLY USED THE TERM "POST OFFICE" IN SECTION 404(b) IN ITS PRECISE SENSE.

A. Congress Has Consistently Used The Term Precisely For More Than A Century.

In enacting legislation, Congress has for more than a century distinguished between independent post offices and their subordinate retail facilities, such as stations, branches and contractor-operated units. Moreover, Congress has consistently used the precise definition of the term "post office" up to and including its enactment of section 404(b). The longest standing example of its precise use consists of the statutory mandates and restrictions regarding the establishment of stations, branches, and contract units.⁵ Moreover, Title 39 as it existed at the time of the enactment of the Postal Reorganization Act maintained the unique status of "post offices" under federal law. For example, in distinction to the authorizations regarding

⁵ See Act of March 3, 1847, ch. 63, § 10, 9 Stat. 201 (authorizing the Postmaster General to "establish one or more branch post offices, to facilitate the operation of the post-office . . ."); Act of April 16, 1862, ch. 56, § 1, 12 Stat. 379-380 (authorizing the Postmaster General to establish branch post offices); Act of March 3, 1863, ch. 71, § 13, 12 Stat. 703-704 (authorizing the Postmaster General to establish branch post-offices); Act of June 8, 1872, ch. 335, §§ 61, 98, 17 Stat. 296 (authorizing the Postmaster General to establish "post-offices" and "branch-offices"); Act of June 9, 1896, ch. 386, 29 Stat. 313 (restricting establishment of "station[s], substation[s], or branch post-office[s]"); Act of August 24, 1912, ch. 389, 37 Stat. 544 (appropriating funds for the compensation of "clerks in charge of contract stations . . ."); Act of May 18, 1916, ch. 126, § 15, 39 Stat. 163 (authorizing the Postmaster General to enter into contracts for the conduct of "contract stations"); Act of October 28, 1919, ch. 86, 41 Stat. 323 (authorizing the Postmaster General to establish "branch offices, nonaccounting offices, or stations" in the Islands of Hawaii, Puerto Rico, and the Virgin Islands); Act of March 10, 1952, Pub. L. No. 277, ch. 98, § 1, 66 Stat. 23 (authorizing the Postmaster General to establish "postal stations or branch post offices" at camps, posts, or stations of the Armed Forces); Act of April 7, 1958, Pub. L. No. 85-368, 72 Stat. 81 (authorizing the Postmaster General to "enter into contracts for the conduct of contract stations . . ."); Act of September 2, 1958, Pub. L. No. 85-893, § 1, 72 Stat. 1713 (permitting the establishment of postal stations and branch post offices within ten miles of the boundary of the adjoining city).

subordinate retail facilities identified in footnote 6, Congress delegated to the Postmaster General the authority to "establish" and "discontinue" "post offices." 39 U.S.C. § 701(a) (1964). Further, Congress recognized and elaborated upon the administrative significance of a post office by mandating that the Postmaster General "divide post offices into four classes on the basis of the revenue units of each office" 39 U.S.C. § 702(a) (1964). Congress, moreover, was well aware of the process of consolidating post offices before 404(b) was enacted, since it authorized the Postmaster General to "consolidate" post offices, 39 U.S.C. § 701(a)(3) (1964), and enacted a prohibition against the consolidation of post offices at county seats, 39 U.S.C. § 701(b) (1964).

Another example of the statutory distinction between "post offices" and their subordinate units in former Title 39 is 39 U.S.C. § 705 (1964), which authorized the establishment of subordinate retail outlets, such as "branch post offices," "stations, substations, or branches of a post office," and "contract stations." 39 U.S.C. § 705 (1964). This provision also forbade the Postmaster General from "discontinuing an established post office" "within twenty miles of the outer boundary or limits of a village, town, or city having 1,500 or more inhabitants and in which the principal office is located" 39 U.S.C. § 705(c) (1964).

Numerous other postal statutes not directly concerned with the establishment of postal facilities have also illustrated the distinction between a station or branch and a post office. For example, former 39 U.S.C. §§ 3524-3530 (1964), which set compensation levels for postmasters and other management employees, clearly show the administrative distinction between a post office, supervised by a postmaster, and its subordinate stations and branches, generally under the direction of a station superintendent. Finally, in extending the protection of criminal statutes to postal facilities and operations, Congress was careful to apply those statutes not only to post

offices, but to their subordinate service units. *See, e.g.*, 18 U.S.C. §§ 1703, 1708, 1709, 1712, and 1721.

Thus, at least since the mid-1800s, Congress has consistently recognized the distinction between "post offices" and their subordinate retail units. There is no indication that Congress ever abandoned the distinction. To the contrary, the floor debates, an analysis of the competing legislative proposals that ultimately resulted in 404(b), and the conference report all demonstrate that Congress quite deliberately aimed at independent post offices and not at retail facilities generally.

B. The Floor Debates Show That Congress Sought To Address A Problem Shared By Rural Postal Customers By Aiming Only At Independent Post Offices.

Congress' awareness of the distinction between "post offices" and other subordinate facilities is documented in floor debates prior to enactment of the legislation which became 404(b). The history of the present-day language in 404(b) can be traced to an amendment proposed by Senator Randolph to amend the Postal Reorganization Act Amendments of 1976, H.R. 8603, 94th Cong., 2d Sess. (1976) (enacted into law as Pub. L. No. 94-421, 94th Cong., 2nd Sess. (1976)). 122 Cong. Rec. 23,100 (August 23, 1976); 122 Cong. Rec. 28,565 (August 31, 1976). The Randolph Amendment provided for local participation in determinations to discontinue small rural post offices, or to consolidate them under the management of another post office.⁶

⁶ The version of the amendment originally passed by the Senate provided that a patron could appeal a decision to any U.S. Court of Appeals. The conference committee modified this language to permit patrons to appeal decisions to the Postal Rate Commission. See H.R. Rep. No. 94-1444, 94th Cong., 2d Sess. 17 (1976), *reprinted in* 1976 U.S.C.C.A.N. 2440; *see also* 122 Cong. Rec. 28,565 (August 31, 1976) (remarks of Senator Randolph).

In floor debates, Senator Randolph expressed his opposition to the "indiscriminate closing of our rural and small town **post offices**" as well as to the decision "to create **branches** out of many post offices close to large cities." 122 Cong. Rec. 6314 (March 11, 1976) (emphasis added). To curtail such actions, he offered legislation requiring the Postal Service to "substantiate any proposal to change or eliminate **independent post offices**." *See* 122 Cong. Rec. 6314 (March 11, 1976) (emphasis added). Thus, the amendment's sponsor was aware of the distinction between independent post offices and knowingly limited the proposed legislation to closings and consolidations of post offices.

Senator Hollings' comments, delivered shortly after the Senate's passage of the Randolph Amendment, also demonstrated the understanding that 404(b) was specifically targeted at post offices. In explaining his amendment to H.R. 8603, which would have incorporated Senator Randolph's post office closing provision, 122 Cong. Rec. 27,111 (August 23, 1976), Senator Hollings observed:

The Postal Service has recently decided to close small post offices in rural America. Mail service to rural areas is provided through 18,300 small **post offices**--formerly referred to as third- and fourth-class **post offices**; 2,100 contractor operated **facilities**; and 30,700 rural routes. About 4 million families are served by these **facilities**. Again, the Postal Service would close these **offices** in the name of saving dollars.

122 Cong. Rec. 27,116 (August 23, 1976) (emphasis added). Senator Hollings thus recognized that a variety of facilities served rural customers, and that of these, only "post offices" were targeted by the legislation.

C. Congress Considered And Rejected Both Narrower And Broader Scopes For What Became 404(b).

Competing legislative proposals introduced during the period in which 404(b) was debated and enacted show a continued sensitivity to the precise definition of "post office," thereby demonstrating Congress' intent to target independent post offices and not other facilities.⁷ Senator Scott, for example, targeted a subset of post offices by introducing legislation to require the Postal Service "to make certain considerations prior to the closing of third- and fourth-class post offices." 122 Cong. Rec. 3313 (February 17, 1976). In explaining the purpose of the legislation, Senator Scott feared the closing of a "large percentage of the 18,290 third- and fourth-class post offices in many small communities" *Id.*

Similarly, the Small Post Office Preservation Act introduced by Representative Kastenmeier illustrated congressional sensitivity to the precise use of the term "post office." *See* H.R. 13576, 94th Cong., 2d Sess. (1976) (discussed at 122 Cong. Rec. 13,168 (May 10, 1976)); *see also* H.R. 12801, 94th Cong., 2d Sess. (1976); 122 Cong. Rec. 8010-11, 8018 (March 25, 1976). As explained by Representative Dodd, the Small Post Office Preservation Act would have prohibited the Postal Service from effecting a post office closing unless:

- (1) it could convince a majority of the patrons that alternative service was acceptable; or
- (2) it would replace the post office with a contract facility--a community post office (CPO) . . . ; or
- (3) it met all of the following four criteria: (a) an equivalent or improved level of service would be provided; (b) less than 35 families are currently being served by the post office being evaluated; (c) another postal facility is easily accessible to persons regularly served by the present post office; and (d) a substantial decrease

⁷ Indeed, numerous bills were introduced aimed solely at closings of third- and fourth-class post offices, as defined under former section 702(a) of Title 39. *See, e.g.,* H.R. 12143, 94th Cong., 2d Sess. (1976); H.R. 12665, 94th Cong., 2d Sess. (1976); H.R. 12994, 94th Cong., 2d Sess. (1976); H.R. 13216, 94th Cong., 2d Sess. (1976); H.R. 14037, 94th Cong., 2d Sess. (1976).

in revenues and patronage has been realized over the past three year period in connection with the post office being evaluated.

See 122 Cong. Rec. 13168 (May 10, 1976).⁸

Hence, two legislative proposals made at the time Congress was debating how to provide greater protection for rural postal customers were narrower than what resulted in 404(b). A broader proposal was also made. Representative Abdnor proposed legislation which would have subjected all changes in "the nature of postal services provided by any post office facility" to a veto by customers of the facility. *See* H.R. 12864, 94th Cong., 2d Sess. (1976), 122 Cong. Rec. 8,726 (March 30, 1976).

Thus, faced with the perceived need to enact legislation protecting rural postal customers, Congress considered responses ranging from protection of a subset of post offices to protection of all postal facilities. In the end, it chose a middle ground in 404(b) by protecting only independent post offices.

- D. The Conference Report On The Reconciliation Of The House And Senate Versions Confirms Congress' Specific Intent to Limit The Application Of 404(b) To Independent Post Offices.

The best evidence of Congress' intent appears in the conference report on H.R. 8603:

The conference substitute adopts the Senate provision except that the right of appeal to a United States court of appeals is deleted and instead there shall be a

⁸ Representative Dodd further acknowledged that "post office" does not include contractor operated facilities. In commenting on the Small Post Office Preservation Act, he observed:

Certainly, in communities where equal or improved service can be provided by closing the **post office** and establishing a **privately-operated contract facility, or extending rural delivery**, it is in the public interest to do so

122 Cong. Rec. 13,168 (May 10, 1976) (emphasis added).

right of appeal to the Postal Rate Commission. The managers intended that an appeal to the Commission under this new provision may be made only by a regular patron of a post office which has been ordered to be closed or consolidated. Also, **the managers intend that this provision apply to post offices only and not to other postal facilities.**

See H.R. Rep. No. 94-1444, 94th Cong., 2d Sess. 17 (1976), *reprinted in* 1976 U.S.C.C.A.N. 2440 (emphasis added). Thus, after considering and rejecting narrower legislation that would have been limited to third- and fourth-class post offices, and after acknowledging that rural postal customers are served by a variety of facilities--including branches, stations and contract units, Congress settled on a middle ground and made 404(b) applicable only to post offices, thereby continuing its consistent use of the precise definition of "post office."

Thus, with Congress' history of using the term "post office" in its exact sense to refer to independent post offices, legislation was introduced by Senator Randolph who indicated an intent to continue that historical use. Floor comments, the express statement of the conference committee, and a comparison with competing legislative proposals all confirm Congress' intent to use the term precisely.

II. FEDERAL COURT DECISIONS APPLY 404(b) ONLY TO INDEPENDENT POST OFFICES HEADED BY A POSTMASTER AND NOT TO FACILITIES SUCH AS STATIONS, BRANCHES, COMMUNITY POST OFFICES, OR OTHER CONTRACT POSTAL UNITS UNDER THE ADMINISTRATIVE CONTROL OF AN INDEPENDENT POST OFFICE.

Four federal court decisions have had occasion to address the scope of 404(b): Wilson v. United States Postal Service, 441 F. Supp. 803 (C.D. Cal. 1977); Knapp v. United States Postal Service, 449 F. Supp. 158 (E.D. Mich. 1978); Shepard Community Association v. United States

Postal Service, Civ. No. C2-82-425 (S.D. Ohio 1985) (October 7, 1985)⁹; and Citizens for the Hopkins Post Office v. United States Postal Service, 830 F. Supp. 296 (D.S.C. 1993). Each of these supports the Postal Service conclusion that 404(b) does not apply to the discontinuance of subordinate facilities.

In both Wilson and Knapp, it was alleged that the transfer of mail processing operations from several local post offices to other facilities constituted a "consolidation" of post offices covered by 404(b). Both courts analyzed these claims by looking to statements made by Senator Randolph at the time he introduced what became 404(b):

The type of "closing" and "consolidation" which induced Senator Randolph to introduce the bill that became § 404(b) is the same type of "closing" and "consolidation" addressed by § 101(b) and, evidently, is the same type of "closing" and "consolidation" to which § 404(b) should be construed to refer. "Closing" thus refers to the complete elimination of the post office. "Consolidation," while more difficult to describe, certainly has the characteristic of subordinating the day to day overall management of one office having a postmaster to the administrative personnel of another office.

Knapp, 449 F. Supp. at 162 (quoting Hearings on S. 2844 before the Senate Comm. on Post Office and Civil Service, Part 4, 94th Cong., 2d Sess. 142 (1976)); *see also* Wilson, 441 F. Supp. at 806 (quoting the same hearing language). Both the Wilson and the Knapp courts thus rejected the claims that the transfer of mail processing operations was subject to 404(b) notice and comment procedures since 404(b) applies only when a post office served by a postmaster is closed (completely eliminated) or consolidated (by subordinating the day to day management of a facility to administrative personnel in another independent post office). Wilson, 441 F. Supp. at 805-06; Knapp, 449 F. Supp. at 162.

⁹ A copy of this slip opinion was previously filed with the Commission as part of Docket No. A94-8, *In the Matter of Benedict*, MN 56436 (Irving E. Morrill, Petitioner).

The Wilson and Knapp decisions concluded that 404(b) had the effect Senator Randolph intended when he stated:

It is important that the independence and integrity of communities continue and that good mail service is maintained. To insure this, I introduced legislation, S.3082, on Thursday, March 4, to provide for an open and participatory review of Postal Service changes. Under this legislation the U.S. Postal Service must substantiate any proposal **to change or eliminate independent post offices.**

122 Cong. Rec. 6314 (1976) (emphasis added).

Hopkins is in accord with Wilson and Knapp in that the court rejected the contention that the transfer of mail processing operations, in this instance the casing of mail, is not a "consolidation" as that term is used in 404(b). In analyzing plaintiff's claim, the Hopkins court noted that since 404(b) fails to define "consolidation," "deference must be had to the agency's interpretation of the statute so long as it is reasonable and consistent with the purpose of the statute." Hopkins, 830 F. Supp. at 298 (citing Chevron USA, Inc. v. NRDC, 467 U.S. 837 (1984) and K-Mart Corp. v. Cartier, Inc., 486 U.S. 281 (1988)). The court then looked at the Postal Service definition of "consolidation" and concluded that it was "reasonable and in keeping with the intent of Congress in this statute." *Id.* at 299.

While the Wilson, Knapp, and Hopkins decisions may be distinguished on their facts, their legal conclusions regarding the scope of 404(b) are completely in accord with the Postal Service position: the procedures mandated by 404(b) apply only to discontinuation (closing or consolidation) of a post office, a facility under the direction of a postmaster, and not a station, branch, contract unit, or other subordinate facility under the administrative supervision of a post office.

The decision in Shepard Community Association v. United States Postal Service, Civ. No. C2-82-425 (S.D. Ohio 1985) involved a dispute over whether 404(b) covered the closing of

the Shepard Station of the Columbus, Ohio Post Office. Shepard, slip op. at 1-3, 12. The Shepard court reached the same conclusions as the other courts considering the scope of 404(b), but did so after a more thorough analysis including a closer examination of 1) the legislative history of 404(b), 2) the general policy of encouraging independent decision making embodied in the Postal Reorganization Act, and 3) Postal Service rulemaking that eliminates any vestige of ambiguity in 404(b).

The Shepard court looked to the legislative history of 404(b) and noted Senator Randolph's language distinguishing independent post offices from stations and branches. The Shepard court continued:

Perhaps the strongest indication that Congress intended to distinguish post offices from branches and substations is found in the House Conference Report from the conference committee for the legislation -- "The managers intend that this provision apply to post offices only and not to other postal facilities." H.R. Rep. 94-1444, 94th Cong., 2d Sess. 17, *reprinted in 1976 U.S. Code Cong. and Ad. News*, 2434, 2440.

Shepard, slip op. at 9. Thus, the Shepard court found strong indications in the legislative history of 404(b) that Congress had used the term "post office" precisely and meant to exclude other retail postal facilities such as stations, branches, and contract units.

The Shepard court considered the general policies underlying the Postal Reorganization Act, noting that 404(b) constitutes a specific statutory check that runs counter to the general policy of giving the Postal Service broad decision making authority. Shepard, slip op. at 7-10 (citing Buchanan v. United States Postal Service, 508 F.2d 259, 262 (5th Cir. 1975); Egger v. United States Postal Service, 436 F. Supp. 138, 140 (W.D. Va. 1977); and Rockville Reminder, Inc. v. United States Postal Service, 350 F. Supp. 590, 593 (D. Conn. 1972), *aff'd*, 480 F.2d 4 (2d Cir. 1973)). The Shepard court determined that the Postal Service had, in the valid exercise of its

rulemaking authority and consistent with the general policy regarding freedom of decision making, adopted extensive regulations distinguishing stations, branches, and community post offices from independent post offices, and that in adopting regulations pursuant to 404(b) had preserved these distinctions. Shepard, slip op. at 9-12. Indeed, it quoted, with approval, the Postal Service statement accompanying adoption of those regulations:

A number of the letters we received supporting the retention of particular postal facilities dealt with postal stations or branches, urban or rural. We welcome community involvement in advising the Postal Service about facility deployment and other service decisions as they relate to branches and stations of post offices. But by long tradition, postal laws and regulations have placed decisions with respect to stations and branches on a more flexible and decentralized basis than decisions concerning post offices, with the result that stations and branches tend to be changed more frequently than post offices are changed. This is most apparent in the case of contract stations and branches (including Community Post Offices), which are operated pursuant to contracts between the operator and the Postal Service that are terminable on notice by the operator.

42 Fed. Reg. 59,082 (November 15, 1977), *quoted in* (excepting the last sentence), Shepard, slip op. at 11.¹⁰

After considering the legislative history of 404(b) and the Reorganization Act, valid postal regulations, and the Knapp and Wilson decisions, the Shepard court concluded:

This Court agrees with the decisions to the effect that section 404(b) does not apply to the closing of a postal station. The Shepard¹¹ station was not an independently run post office with its own postmaster and supervisory personnel. It was a postal station already under the direction of the postmaster of the Columbus [P]ost [O]ffice. While the Postal Service is required to consider community input when closing that community's post office or consolidating the post office with that of a larger city, the Service must have the flexibility to control the arrangement of other postal facilities within the jurisdiction of a city's

¹⁰ In a subsequent revision of its regulations to conform post office closing procedures to changes in its management structure, the Postal Service again considered the proper scope of section 404(b). 51 Fed. Reg. 41,302 (November 14, 1986). The Postal Service again found it necessary to retain its administrative flexibility with regard to the location of subordinate facilities, particularly those operated by a contractor.

¹¹ For unknown reasons, the Court's opinion used the spelling "Shephard" throughout.

main post office. As has been previously discussed, a primary responsibility of the Postal Service is to provide improving, efficient, and economical postal service to the public. The Service would be unduly hampered if section 404(b) were construed to apply to every decision to rearrange the location of postal facilities within a city to better serve areas experiencing shifts in population, to accommodate for the building of new, more efficient nearby facilities, or simply to discontinue unnecessary or outdated postal facilities. Since the Court determines that the section 404(b) notice and hearing requirements do not apply to the closing of postal stations, defendants' motion to dismiss this cause of action is **GRANTED**.

Shepard, slip op. at 14-15.

Thus, each of the four federal court decisions that examined the scope of 404(b) concluded that Congress therein used the term "post office" in its precise sense to apply only to discontinuation of an independent post office, under the direction of a postmaster, and not to the transfer of mail processing operations (Knapp, Wilson, Hopkins) or a closing of a station of an independent post office (Shepard). Hence, each of these decisions is entirely consistent with the Postal Service conclusion that 404(b) also does not apply to discontinuation of a branch, contract unit, or other subordinate facility under the administrative supervision of a post office.

The Postal Service does recognize that subordinate facilities should not be closed for arbitrary or unsatisfactory reasons, and so has adopted separate procedures to require the discontinuance of a station, branch, or contract unit to be approved by senior level Headquarters management. 39 CFR § 241.2.

Observatory Station was one of approximately fifty retail facilities located in Pittsburgh.¹² Furthermore, because Observatory Station was not an independent post office, the Commission lacks jurisdiction under 39 U.S.C. § 404(b) to entertain the Petition's request for review.

¹² All of these facilities can be identified via the United States Postal Service webpage, <http://www.usps.com/>, using the "Locate a Post Office" link.

CONCLUSION

WHEREFORE, the United States Postal Service respectfully requests that this matter be dismissed.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

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CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served upon all participants of record in this proceeding in accordance with section 12 of the rules of practice.

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1137
July 26, 2006

ATTACHMENT #1

Post Offices

Post Office Changes

Old/ New	Finance No.	ZIP Code	State	P.O. Name	County/ Parish	Station/Branch/ Unit	Unit Type	Effective Date	Comments
Old	05-6786	94131	CA	San Francisco	San Francisco	Diamond Heights	Classified Station		This announcement changes the type of postal facility from a classified station to a carrier annex.
New	05-6786	94131	CA	San Francisco	San Francisco	Diamond Heights	Carrier Annex	06/20/2006	
Old	18-6471	50661	IA	New Hampton	Chickasaw	North Washington	Community Post Office	10/01/2005	Community Post Office™ discontinued. Retain ZIP Code™. Establish a place name. Continue to use North Washington IA 50661 as last line of address.
New	18-6471	50661	IA	New Hampton	Chickasaw	North Washington	Place Name	05/20/2006	
Old	20-0504	42321	KY	Beech Creek	Muhlenberg	Main Office	Post Office	04/08/2005	Post Office discontinued. Retain ZIP Code. Establish a place name. Continue to use Beech Creek KY 42321 as last line of address.
New	20-2224	42321	KY	Drakesboro	Muhlenberg	Beech Creek	Place Name	05/06/2006	
Old	26-1600	55002	MN	Center City	Chisago	Almelund	Community Post Office	05/28/2002	Community Post Office discontinued. Retain ZIP Code. Establish a place name. Continue to use Almelund MN 55002 as last line of address.
New	26-1600	55002	MN	Center City	Chisago	Almelund	Place Name	06/17/2006	
Old	28-3012	63942	MO	Gatewood	Ripley	Main Office	Post Office	09/27/2001	Post Office discontinued. Retain ZIP Code. Establish a place name. Continue to use Gatewood MO 63942 as last line of address.
New	28-2172	63942	MO	Doniphan	Ripley	Gatewood	Place Name	02/03/2006	
Old	28-5556	63362	MO	Moscow Mills	Lincoln	Main Office	Post Office		Realign ZIP Code boundaries. Use Winfield MO 63389 as last line of address for the 97 deliveries previously in ZIP Code 63362.
New	28-8550	63389	MO	Winfield	Lincoln	Main Office	Post Office	08/05/2006	
Old	33-1425	07009	NJ	Cedar Grove	Essex	Overbrook	Classified Station	03/31/2006	Classified station discontinued. Retain ZIP Code. Continue to use Cedar Grove NJ 07009 as last line of address.
New	33-1425	07009	NJ	Cedar Grove	Essex	Main Office	Post Office	06/17/2006	
Old	33-2835	07026	NJ	Garfield	Bergen	Ritz	Classified Station	05/31/2006	Classified station discontinued. Retain ZIP Code. Continue to use Garfield NJ 07026 as last line of address.
New	33-2835	07026	NJ	Garfield	Bergen	Main Office	Post Office	06/17/2006	
Old	41-6608	15214	PA	Pittsburgh	Allegheny	Observatory	Classified Station	06/10/2006	Classified station discontinued. Retain ZIP Code. Use Pittsburgh PA 15214 as last line of address.
New	41-6608	15214	PA	Pittsburgh	Allegheny	Kilbuck	Classified Station	06/17/2006	
Old	49-5950	84667	UT	Moroni	Sanpete	Wales	Community Post Office	01/03/2005	Community Post Office discontinued. Retain ZIP Code. Establish a place name. Continue to use Wales UT 84667 as last line of address.
New	49-5950	84667	UT	Moroni	Sanpete	Wales	Place Name	06/02/2006	