

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

Before Commissioners: George Omas, Chairman;
Dawn A. Tisdale, Vice Chairman;
Mark Acton; Ruth Y. Goldway; and
Tony Hammond

Observatory Finance Station
Pittsburgh, PA 15214-0651
(Observatory Hill Inc., Petitioner)

Docket No. A2006-1

ORDER DENYING POSTAL SERVICE
MOTION TO DISMISS AND REMANDING
FOR FURTHER CONSIDERATION

(September 29, 2006)

I. INTRODUCTION AND SUMMARY

The Petitioner filed an appeal claiming that the Postal Service did not follow all of the statutory requirements of 39 U.S.C. § 404(b) before closing the Observatory Finance Station located in Pittsburgh, Pennsylvania.¹ The Postal Service claims that it did not have to follow those requirements in this case, concedes that it did not follow those requirements with respect to the closing, and moves to dismiss the appeal.²

¹ Petition for Review received from Malcolm Hardie, President, Observatory Hill Inc., regarding the closing of the Observatory Finance Station, Pittsburgh, PA, June 21, 2006 (Petition). The Petitioner, Observatory Hill Inc., is a § 501(c)(3) corporation claiming to represent 6,000 residents within the surrounding area of Observatory Finance Station, of which 2,000 are seniors. The Petitioner has collected 606 signatures in support of keeping Observatory Finance Station open.

² United States Postal Service Motion to Dismiss Proceeding, July 26, 2006 (Motion to Dismiss). Contemporaneously with the Motion to Dismiss, the Postal Service filed a Motion of the United States Postal Service for Late Acceptance of Its Motion to Dismiss Proceeding on July 26, 2006 (Motion for Late Acceptance). Since there does not appear to be any prejudice from the delay, the Commission grants the Postal Service's Motion for Late Acceptance.

This case involves the question of whether the Postal Service followed the appropriate procedures before closing Observatory Finance Station. The Commission finds that the Postal Service apparently has not fulfilled its obligations under the circumstances.

II. PROCEDURAL HISTORY

On June 21, 2006, the Petitioner filed an appeal petition with the Postal Rate Commission claiming the Postal Service did not follow the § 404(b) statutory requirements when it closed the Observatory Finance Station on June 16, 2006.³ The Commission issued a notice and order accepting the Petitioner's appeal and establishing a procedural schedule on July 28, 2006.⁴ The procedural schedule and Commission regulations required the Postal Service to file the administrative record in this case no later than July 6, 2006.⁵ On July 6, 2006, the Postal Service filed a notice stating that it did not compile an administrative record in this case and that on July 21, 2006 it would be filing a motion to dismiss the proceeding arguing that the Commission lacked jurisdiction to hear the appeal.⁶ The Postal Service filed its Motion to Dismiss on July 26, 2006. The Petitioner filed a pleading opposing the Postal Service's Motion to Dismiss on August 1, 2006⁷ and a Supplement to its Appeal on August 2, 2006.⁸ The Commission also received letters with packets of information from Congressman Mike Doyle and Senator Rick Santorum.⁹

³ Observatory Finance Station was established as a post office station in 1912. *See Postal Bulletin* 9985 (November 13, 1912).

⁴ Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. Section 404(b)(5), June 28, 2006.

⁵ *Id.* at 3; 39 C.F.R. § 3001.113.

⁶ Notice of United States Postal Service Regarding Filing of Administrative Record, July 6, 2006 (Notice).

⁷ Observatory Hill Inc. Motion in Response to the United States Postal Service Motion, August 1, 2006 (Opposition).

⁸ Supplement to the Petition for Review, August 2, 2006 (Supplement to Petition).

⁹ Letter from The Honorable Mike Doyle to Steven Williams regarding Docket No. A2006-1, August 11, 2006; Letter from The Honorable Rick Santorum to Steven Williams regarding Docket No. A2006-1, August 14, 2006. These letters did not urge the Commission to act in a certain way with respect to the appeal. Instead, they asked the Commission to consider the merits of the appeal.

III. ACTIONS TAKEN BY THE POSTAL SERVICE WITH RESPECT TO CLOSING

Prior to closing the doors of Observatory Finance Station permanently on June 16, 2006, the Postal Service took the following procedural steps:

Sent out questionnaires in the Spring/Summer of 2005 to post office box customers;¹⁰

Held a community meeting at the Kilbuck Finance Station, approximately three miles away on May 5, 2005;¹¹

Posted a proposal for closing at Observatory, Allegheny, and Kilbuck Stations from July 11 to September 9, 2005;¹²

Denied a request of Petitioner for a community meeting on October 3, 2005, as being past the “proposal and invitation for customer comment” stage of the case;¹³

Informed customers that a right to appeal the Postal Rate Commission existed;¹⁴ and

Did not make any written findings that comply with § 404(b) requirements.¹⁵

IV. POSTAL SERVICE’S MOTION

The Postal Service Motion to Dismiss argues that the Commission does not have jurisdiction to consider the Petitioner’s request. The Postal Service notes that the Commission only has jurisdiction to hear appeals of decisions to close “post offices.” The Motion to Dismiss urges the Commission to interpret the statutory term “post office” in its technical sense applying the procedural closing requirements only to “independent

¹⁰ Petition at 3; Motion to Dismiss at 3.

¹¹ The Petitioner disputes that this meeting was held at a place and location convenient to the community.

¹² Petition, Attachment, Letter from Richard L. Sekinger, Postmaster, Pittsburgh, PA to Susan Rooney, dated October 3, 2005 (Rooney Letter).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Notice, *supra*.

post offices,” which are “facilit[ies] occupied and immediately supervised by a postmaster.”¹⁶ The Postal Service argues that § 404(b) does not apply to “the closing or consolidation of a station, branch, contract unit, or other subordinate facility under the administrative supervision of a post office.”¹⁷ Thus, according to the Postal Service, because Observatory Finance Station is classified administratively as a “station” and not as an “independent post office,” the Postal Service did not have to follow the statutory § 404(b) procedures prior to closing the facility.¹⁸ Indeed, the Postal Service concedes that it did not follow the § 404(b) procedures before closing Observatory Finance Station.¹⁹

In support of its position, the Postal Service cites many statutory provisions from former Title 39, excerpts from Congressional floor debates, and four federal court cases.²⁰ It fails to discuss any of the numerous Commission decisions that have evaluated these arguments.²¹

V. PETITIONER’S RESPONSE

The Petitioner contends that Observatory Finance Station is a post office within the meaning of § 404(b) and that the Postal Service should have followed the statutory closing procedures prior to closing the facility. The Petitioner argues that the term post

¹⁶ Motion to Dismiss at 4.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Notice, *supra*. (“[T]he Postal Service has not created an administrative record compliant with the regulations for closing post offices” in this case); see also, Motion to Dismiss at 1-2 & n.3 (“This is confirmed by the statements in the Petition indicating that no final determination was posted”).

²⁰ *Id.* at 4-5.

²¹ The Postal Service does cite Docket No. A94-8, *In the Matter of Benedict, MN*, although only to inform the Commission and Petitioner that this is a means to obtain a copy of the unpublished slip opinion *Shepard Community Ass’n v. United States Postal Service*, Civ. No. C2-82-425 (S.D. Ohio 1985) (October 7, 1985), which is discussed and analyzed in the Postal Service’s Motion to Dismiss. This method of citation puts the Pennsylvania-based petitioner at a distinct disadvantage in having to locate legible copies of briefs filed by the Postal Service nearly 12 years ago in another case where the files are located in the basement of the Commission’s District of Columbia office. The Commission urges the Postal Service to follow standard litigation practice and furnish copies of cited unpublished opinions as attachments to briefs and motions. See, e.g., D.C. Circuit Rule 28(c)(3).

office was used in the statute in its ordinary, colloquial meaning — a fixed retail facility serving the public. The Petitioner cites several statements from the Congressional floor debates which it believes advance that argument. The Petitioner also provides information on the immediate surrounding area and businesses as well as the composition of Observatory Hill and its relationship to greater Pittsburgh.

VI. COMMISSION ANALYSIS

The Postal Service does not controvert allegations that it began the process of closing Observatory Finance Station by following the statutorily prescribed procedure under § 404(b). The Postal Service apparently halted that process without publishing its analysis and closed the retail facility. The Postal Service admits that it “has not created an administrative record compliant with the regulations for closing post offices,”²² and contends the statute does not afford citizens served by the Observatory Finance Station any rights or recourse.

The Postal Service argues that § 404(b) does not apply to its decision to close Observatory Finance Station. The Postal Service has repeatedly made identical legal arguments in other cases. Indeed, since at least Docket No. A94-8, *In re Benedict, MN*, the Postal Service has submitted almost identically worded briefs to the Commission to contest jurisdiction in post office closing appeal cases.²³ In none of these briefs has the Postal Service addressed, cited, or attempted to distinguish Commission analysis of these contentions.

The Commission has repeatedly rejected these arguments. The Commission first addressed the definition of post office in Docket No. A78-1, *In re Gresham, SC*, Order No. 208 (August 16, 1978). The Commission analyzed whether there were any characteristics of rural routes that would require it to deem them post offices for § 404(b) purposes. In making its determination that rural delivery routes were not post offices within the meaning of § 404(b), the Commission resolved the question as to

²² Notice, *supra*.

²³ See also, e.g., Docket No. A2003-1, *In re Birmingham Green, AL*.

whether “§ 404(b) uses the term ‘post office’ in its ordinary sense — i.e., a fixed retail facility serving the public and acting as the point of origin for delivery routes — or whether a more extended meaning can be given to it.” *Id.* at 6-7.

In another early post office closing case, intervenors raised the concern that once the independent post office was consolidated and turned into a station, the station “could be closed without prior notice or without chance of appeal” since it would be a station, not an independent post office.²⁴ In response to this concern, the Commission stated:

We believe that our Opinion and Order in *Gresham, South Carolina*, is dispositive of the question of the proper definition of what constitutes a “post office” for purposes of the Act In *Gresham*, the Commission held that, based upon our construction of the Act, the term “post office,” as used in § 404(b), is to be defined in its ordinary sense: “[A] fixed retail facility serving the public and acting as the point of origin for delivery routes...,” rather than to be given the more technical meaning implied by a distinction between “post office” in the narrow sense and “branch” or “station.” Applying our interpretation of the term “post office,” as enunciated in *Gresham*, it is clear that even after the proposed consolidation is effected, thereby making Mt. Eden a station of Hayward, the patrons of Mt. Eden would clearly have standing, under § 404(b) of the Act, to appeal any proposed closing or consolidation of that post office. This is the case because, even as a mere station of Hayward, Mt. Eden would be a retail facility, and a part of Hayward from which delivery routes would originate.

Id. at 21-22 (internal footnotes omitted).

In *Oceana Station, Virginia Beach, VA*, the Commission distinguished a situation in which it does not have jurisdiction to hear appeals of post office closings under § 404(b).²⁵ In that case, the Postal Service was closing the Oceana station, but argued that “the decision to close the Oceana station must be considered in light of its planned

²⁴ Docket No. A80-4, *In re Mt. Eden, CA*, Comm’n Op. Affirming Determination – 39 U.S.C. § 404(b)(5) (May 28, 1980) at 2.

²⁵ Docket No. A82-10, *In re Oceana Station, Virginia Beach, VA*, Order No. 436 (June 25, 1982).

network of postal facilities in Virginia Beach.” *Id.* at 4. According to the Postal Service, it was not just closing the Oceana station, it was “enhancing its network by opening a new Virginia Beach main post office 4 miles west of the Oceana station...[which] will permit the Postal Service to move the carriers out of the London Bridge station, making more room for post office boxes and additional retail counter space.” *Id.* at 4-5.²⁶ The Commission found that the proposed closing “must be considered within the context of the Postal Service’s other actions in the area.” *Id.* at 7. Specifically, “[t]he requirements of section 404(b) do not pertain to the specific building housing the post office; but rather are concerned with the provision of a facility within the community.” *Id.* at 6. Accordingly, the Commission held that “the Postal Service is not required to follow the formal section 404(b) procedure when it is merely rearranging its retail facilities in a community, as it is doing in Virginia Beach.” *Id.* at 1.²⁷

The Commission also has developed the definition of post office for purposes of § 404(b) in the context of community post offices (CPOs).²⁸ In *Knob Fork, WV*,²⁹ the first in a line of Commission cases on CPOs, the Commission stated that the “threshold

²⁶ The Postal Service was also adding a Detached Lockbox Unit and self-service facility in the Lynnhaven area and establishing a contract station in the Great Neck area. *Id.* at 5.

²⁷ See also, Docket No. A2003-1, *In re Birmingham Green, AL*, Order No. 1387 (December 3, 2003) at 6 (“These activities indicate that the Service’s action with regard to the Birmingham Green station is part of a rearrangement of the retail network serving the Birmingham community ...”); Docket No. A91-4, *In re San Francisco Main Post Office, CA*, Order No. 891 (July 8, 1991) at 5-6 (“The plans regarding the San Francisco offices, as described by the Petitioners, are rearrangements of facilities. Therefore, the statute permits a decisionmaking process less formal than that established by section 404(b).”) In the instant case, the Postal Service is not opening any new facilities in the area and does not make a claim that by closing Observatory Finance Station, it is merely rearranging its retail facilities. Accordingly, this line of cases is not applicable here.

²⁸ Community post offices are operated by private contractors. As private contracts, they may be terminated by either party, although the Postal Service termination requires authorization from headquarters.

²⁹ Docket No. A83-30, *In re Knob Fork, WV*, Comm’n Op. Remanding Determination for Further Consideration — 39 U.S.C. § 404(b)(5) (January 18, 1984). *Knob Fork*’s progeny contains similar legal holdings and reasoning. See Docket No. A94-1, *In re Waka, TX*, Comm’n Op. Affirming Decision Under 39 U.S.C. § 404(b) (February 4, 1994) at 5-6; Docket No. A94-3, *In re Inavale, NE*, Comm’n Op. Affirming Decision Under 36 U.S.C. § 404(b) (March 15, 1994) at 5 (“The statute intends that, when the Postal Service is planning to close the only retail facility serving a community, the people living in that community have” the protections of § 404(b).); Docket No. A94-8, *In re Benedict, MN*, Comm’n Op. Remanding Decision Under 39 U.S.C. § 404(b) (August 3, 1994) at 7-8.

issue in this case is whether the Knob Fork community post office is a 'post office' as the term is used in section 404(b)." *Id.* at 2 (footnote omitted). The Postal Service argued that the statute should be interpreted using the "technical" definition in the Postal Service Glossary of Postal Terms. *Id.* at 3. This argument did not convince the Commission which recognized that "[t]he statutory language, in section 404(b), however, can be said to include a latent ambiguity: Is 'post office' used in its technical or in its common sense?" *Id.* The Commission noted that:

In ordinary usage, "post office" is a retail facility where patrons may purchase postal services, and dispatch and possibly receive mail. The technical or specialized usage of "post office" adds to the ordinary definition the requirement of a specific degree of managerial independence...including a postmaster position.³⁰

Id. In analyzing the legislative history, including statements by Senator Randolph, the Commission found that "the legislative history does not provide a definitive answer on the meaning of the term 'post office.'" *Id.* at 5.

Indeed, the Commission pointed to a comment by Senator Fong that makes it seem as though Congress meant to use the ordinary definition of post office, including branches and stations. Senator Fong stated "[i]f the Postmaster [General] should decide that he will close a *station*, he can be taken to court."³¹ Ultimately, the

³⁰ The Commission noted that "[t]he American Heritage Dictionary (1976 edition) defines 'post office' as: 'Any local office where mail is received, sorted, and delivered, and stamps and other postal matters are sold.'" *Id.*

³¹ *Id.* (citing 122 Cong. Rec. 14278 (August 23, 1976)) (emphasis added). Further legislative history support for a definition of "post office" that includes branches and stations is found in the statements of Congressman Buchanan:

I commend the gentlemen for including language about closing branches, because in my district ... they were about to close some 27 branches in an urban area and make other radical changes, with no advance warning, with no consultation, with no chance for people to have a hearing on the matter.

I had to go to Federal court to stop it. That certainly ought not to happen over and over again, so I am glad that the gentleman included that language.

See Staff of Comm. On Post Office and Civil Service 94th Cong., 2d Sess., Report on H.R. 8603 Postal Reorganization Act Amendments of 1976 at 547 (Comm. Print No. 94-20 1976).

Commission found that the more reasonable reading of section 404(b) is that it applies whenever the Postal Service seeks to close or consolidate a community's retail facility. In so holding, the Commission rejected the very same arguments the Postal Service makes in this case and based its decision on the following rationale:

Congress, not satisfied with the Postal Service's implementation of this directive [39 U.S.C. § 101(b)], in 1976 added section 404(b) to limit the previous grant of authority and provide a procedure for its exercise. In explaining this amendment, Senator Randolph described the intent as establishing a "very simple mechanism" to insure the opportunity for patrons to participate in the decisionmaking to close or consolidate the community's post office....

The Postal Service accurately points out that the Conference Report states that the provision is to "apply to post offices only and not to other postal facilities." This statement, however, provides no insight to whether "post office" is to mean community post offices as well as independent post offices. It is reasonable to assume that the words "other facilities" refer to units other than retail facilities, such as mail processing centers or vehicle maintenance facilities. The reasonableness of this assumption is underscored by the attempts of interested parties to require the Postal Service to follow section 404(b) procedures before mail processing functions^[32] or rural routes^[33] could be consolidated.

Id. at 4-5 (footnote omitted).

³² *Knapp v. USPS*, 449 F. Supp. 158, 162 (E.D. Mich. 1978) (in finding that § 404(b) does not apply, the court found it important that "[p]ostal customers will not be affected by these transfers" of mail processing functions and that "[g]iven the prospect of adverse impact on the populace of the postal community of such a closing or consolidation, it makes perfect sense to accord affected postal customers the right to notice and a hearing prior to the consolidation as § 404(b) requires."); *Wilson v. USPS*, 441 F. Supp. 803, 805 (C.D. Cal. 1977) (in holding that rearrangements of mail processing operations are not subject to § 404(b), the court highlighted the fact that "[i]n this instance, public services will at the very least remain substantially the same. All of the local post offices in question will remain in existence...; the public can still purchase stamps and money orders, and register, certify or insure their mail."); see also *Hopkins v. USPS*, 830 F. Supp. 296, 299 (D.S.C. 1993) (noting that "[t]he Hopkins Post Office continues to remain in existence. ...The public can still obtain all of the services at the Hopkins Post Office that they could prior to the transfer of the mail-casing operation. These are factors which are important in determining whether or not there has been a consolidation.").

³³ *Martin v. Sloan*, 432 F. Supp. 616 (W.D.N.C. 1977); Docket No. A78-1, *In re Gresham, SC*, Order No. 208 (August 16, 1978).

The *Knob Fork* opinion also found it persuasive that from the point of view of the public, a retail facility performs the same functions as an independent post office and that such an interpretation best conforms to the policies of the Postal Reorganization Act. The Commission found:

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

....

Interpreting "post office" in the conventional sense comports well with the two broad, and sometimes conflicting, policies of the Postal Reorganization Act, as amended — freedom to manage and responsiveness to the public.^[34] Section 404(b) simply gives a procedure and guidelines for the Postal Service to follow in exercising its authority over the nation's system of post offices; it does not place rigid constraints on the Postal Service's management of its system of retail facilities. Section 404(b) does not follow the more intrusive route of an absolute prohibition or numerical limit for closings and consolidations. The Postal Service's reliance on a distinction that is more closely related to the Postal Service's internal management structure [rather] than the public perception of the services provided by the community post offices does not comport with the policy of responsiveness to public concerns. It follows that interpreting "post office" in its non-technical sense promotes one main policy of the statute (responsiveness) without doing violence to the other (managerial freedom).

Id. at 7-8 (footnote omitted). The Commission concluded that Congress' decision to require the Postal Service to follow the section 404(b) procedures did not place an

³⁴ *Buchanan v. USPS*, 508 F.2d 259, 262 (5th Cir. 1975).

undue burden on the Postal Service's managerial discretion. The Commission reasoned that:

We do not anticipate that requiring the section 404(b) procedures before closing CPOs will unduly hamper the operations of the Postal Service. The intent of the amendment was to establish a "very simple mechanism" for decisionmaking on the closing or consolidation of post offices. 122 Cong. Rec. 14277.

The Postal Service's argument that section 404(b) is not applicable because, traditionally, stations, branches and contract facilities tend to be changed more frequently than independent post offices is not persuasive...The Postal Reorganization Act was passed to improve the traditional operating practices of the Post Office Department. The 1976 amendments were "fine tuning" on the Act. Accepting Congressional dissatisfaction with previous functioning, we cannot accept as persuasive an argument based merely on tradition. Rather we must look at the rationale underlying those traditions to determine whether they remain applicable to current practice.

....

Likewise, the Postal Service's emphasis on the decentralized decisionmaking on the provision of retail facilities other than independent post offices does not address the question at issue. Section 404(b) does not place the responsibility for carrying out the requirements at any particular management level within the Postal Service.

Knob Fork, WV at 4-8 (some internal citations omitted).

In so holding, the Commission noted that its decision in *Knob Fork, WV* is consistent with *Oceana Station, Virginia Beach, VA*. It recognized that *Oceana* "involved a relocation of facilities within a community, rather than the closing of the only retail facility serving a community." *Id.* at 7.

In this case, the Postal Service has not raised any new topics or arguments that require the Commission to reevaluate its longstanding prior decisions on the definition of post office. Nothing in the Postal Service's instant Motion to Dismiss addresses the

legal arguments that the Commission found persuasive in its previous cases, and the facts of this case do not change the stature of those well-reasoned opinions.

VII. APPLICATION TO CURRENT PROCEEDING

Congress intended that the Postal Rate Commission and the Postal Service would work together in providing the public with a meaningful opportunity to participate in certain postal matters.³⁵ With respect to the closing of Observatory Finance Station, the Commission is more concerned with furthering Congressional goals than attempting to explore the limits of its appellate authority. While the Commission has rejected the arguments presented in the Motion to Dismiss, it has never specifically considered whether a finance station meets the test of *Mt. Eden* or *Knob Fork*, and the pleadings do not address these decisions.

The basic goals and policies of §§ 101 and 404 specify protections for both urban and rural interests.³⁶ Section 101 requires the Postal Service to provide prompt, reliable and efficient services to the public “in *all* areas” and render postal services “in *all* communities.”³⁷ These postal policies do not allow the Postal Service to arbitrarily or capriciously close offices. The Postal Service is charged with taking these policies into account regardless of whether citizens have a right to appeal to the Postal Rate Commission.³⁸

The pleadings indicate that the Postal Service began the closing process by obtaining customer input to ensure that it would maintain a satisfactory level of service to the public in the Observatory Hill area. It appears, however, that although the Postal Service started that process, it never completed it. To comply with the Congressional mandate of §§ 101 and 404, the Postal Service needs to complete that process with

³⁵ See, e.g., 39 U.S.C. §§ 3622-3625, 3661.

³⁶ 39 U.S.C. §§ 101(b), 404(b)(2)(C).

³⁷ 39 U.S.C. § 101(a) (emphasis added).

³⁸ It is neither the Commission’s responsibility nor inclination to second guess proper Postal Service decisions to alter individual retail locations.

respect to Observatory Finance Station by evaluating, among other things, input from affected citizens, and reaching a conclusion on whether a satisfactory level of service will be maintained. This obligation is heightened when the public is confused about the status of the Postal Service's actions and about the status of their right to be heard, particularly when that confusion is caused by the contradictory statements of the Postal Service.³⁹ Indeed, when the Postal Service's actions are contradictory and confusing to a public not well-versed in postal matters, the Postal Service has an inherent obligation to make sure that its customers are adequately informed about why its actions are consistent with applicable public policy.

In the circumstance of this case, the Postal Service had the obligation to consider the input it solicited from customers, and reach a decision on whether closing this facility was consistent with the policies of §§ 101 and 404 that was neither arbitrary nor capricious. It had the further obligation to show that this had been done.

The current procedural posture of Observatory Finance Station is unique. Ordinarily, the Postal Service makes its decision to "close" a retail facility while that facility remains open. Here, however, the retail facility has been closed since June 16, 2006, and, therefore, the Postal Service's further consideration of whether to "close" Observatory Finance Station will not be taking place within the context of an ongoing post office. To satisfy the statutory requirements, the Postal Service must consider whether to "close" a post office that is in effect already closed. This changes the analysis slightly, but the Postal Service's obligations with respect to the procedure it must follow and the findings it must make remain the same. Specifically, it must consider the sufficiency of the services that it currently offers in the area as well as the other relevant factors.⁴⁰ It should adequately justify its findings and transparently communicate those findings in a rational way to affected postal patrons.

³⁹ Compare Rooney Letter *with* Motion to Dismiss at 2-3.

⁴⁰ Cf. Docket No. A95-11, *In re South Westerio, NY*, Comm'n Op. Affirming Decision Under 39 § 404(b) (September 8, 1995) at 15.

If after thorough review and proper completion of the evaluation the Postal Service finds that its actions in closing Observatory Finance Station are not consistent with §§ 101 and 404, it should alter its prior decision and take appropriate action to provide sufficient services to the public in the Observatory Hill area.

It is ordered:

1. The Motion of the United States Postal Service for Late Acceptance of Its Motion to Dismiss Proceeding filed on July 26, 2006, is granted.
2. The United States Postal Service Motion to Dismiss Proceeding, filed on July 26, 2006, is denied.
3. The Postal Service's determination to close Observatory Finance Station is remanded for further consideration as outlined herein.

By the Commission.

(S E A L)

Steven W. Williams
Secretary