

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

In the Matter of:

Penobscot Finance Station
Detroit, MI 48226
(Barbara Sherwood, Petitioner)

Docket No. A2011-5

COMMENTS OF UNITED STATES POSTAL SERVICE
(January 31, 2011)

By means of Order No. 604 (December 10, 2010), the Postal Regulatory Commission docketed correspondence from a customer of Penobscot Station in Detroit, Michigan, assigning PRC Docket No. A2011-5 as an appeal pursuant to 39 U.S.C. § 404(d).¹ In response to Petitioner's Participant Statement,² the Postal Service renews the arguments set forth in its Notice of Filing³ and its Comments in PRC Docket No. A2010-3⁴ ("A2010-3 Comments").

This appeal concerns a station, and not a Post Office for purposes of 39 U.S.C. § 404(d), so the Commission lacks subject matter jurisdiction. As described in the A2010-3 Comments (at 5-9), section 404(d) does not apply to retail locations such as stations which are subordinate to a Post Office, and the Commission lacks jurisdiction to consider any appeal of a station's discontinuance: this is true both because Congress knowingly used "Post Office"

¹ Penobscot Station appears on the list of stations and branches identified for possible discontinuance in PRC Docket No. N2009-1. See USPS-LR-N2009-1/4 - Current List of Stations/Branches Identified As Candidates for Discontinuance Study Under Station/Branch Optimization/Consolidation Initiative (Public Version) (January 29, 2010).

² Participant's Statement Received from Barbara Sherwood Regarding the Penobscot Finance Station, Detroit, MI 48226, PRC Docket No. A2011-5 (January 10, 2011).

³ Notice of United States Postal Service, PRC Docket No. A2011-5 (December 21, 2010).

⁴ Comments of United States Postal Service Regarding Jurisdiction Under (Current) Section 404(d), PRC Docket No. A2010-3 (April 19, 2010).

in its technical sense thereby excluding stations and branches, as demonstrated in the legislative history, and because Congress had used “Post Office” in its technical sense for well over a century.

Congress has been presented with numerous bills that would expand the meaning of the term “Post Office” to include subordinate stations and branches, but it has declined these opportunities to alter the original meaning of the term “Post Office.” The Commission’s ongoing requests for expansion of its subject matter jurisdiction to include not just Post Offices, but also stations and branches, and Congress’ subsequent disinclination to enact any changes, illustrate that both the Commission and Congress recognize that the existing grant of jurisdiction is, and should continue to be, limited. A2010-3 Comments at 10-13, & n.18. The Commission has itself recognized the distinction between a Post Office and subordinate postal units, as in its discussion of consolidation in PRC Docket No. A78-1. Similarly, federal court decisions have agreed with the Postal Service, and not the Commission, regarding the differences in jurisdiction. A2010-3 Comments at 14-17.

In contrast to the consistent understanding of the term “Post Office” applied by Congress, federal courts, and the Postal Service for jurisdictional purposes, the Commission has applied a varying interpretation of its jurisdiction, expanding and contracting it as deemed appropriate to the facts of specific cases. The Commission has interpreted and asserted its subject matter jurisdiction inconsistently under an unchanged Congressional grant of authority, without perceiving any need to justify claimed changes in jurisdiction. This has

the corresponding effect of limiting the utility of precedent, since a changed claim of subject matter jurisdiction serves to reduce or eliminate the value of otherwise precedential decisions. A2010-3 Comments at 5 n.7.

The Commission's asserted jurisdiction has morphed from "the last retail facility in a community," to first include and more recently exclude contract units, to include all stations and branches, and to then include facilities in which retail operations are suspended without formal discontinuance. And when determining jurisdiction based on the last retail facility in a community (A2010-3 Comments at 14-15, 18), the Commission has appeared to apply a different definition of "community" for consolidations, rearrangements, and relocations of postal facilities. A federal agency lacks the legal authority to vary its grant of subject matter jurisdiction by Congress, especially when contrary to the express legislative history underlying Congressional action. Accordingly, through the actions described above, the Commission has interpreted and asserted its subject matter jurisdiction improperly.

The consistent understanding and use of the term "Post Office" by Congress, federal courts, and the Postal Service is the proper use, and serves to define the Commission's jurisdiction as intended by Congress.

In addition to the Postal Service's position summarized above and addressed in more detail in PRC Docket Nos. A2010-3 and N2009-1, the procedural requirements of 39 U.S.C. § 404(d) do not apply here because the discontinuance of Penobscot Station does not qualify as a closure envisioned by 39 U.S.C. § 404(d). As recognized in PRC Docket No. A2010-3, the section

404(d) procedural requirements do not apply where postal customers do not lose access to postal services due to the location of alternate retail facilities in “close proximity” to the discontinued station. See Order No. 477, PRC Docket No. A2010-3 (June 22, 2010) at 7-8. In this case, affected customers will not lose access to postal services because multiple postal retail facilities are located within 1.7 miles of Penobscot Station. Notice of United States Postal Service, PRC Docket No. A2011-5 (December 21, 2010) at 3, Exhibit 2.

For the reasons set forth above, and in the Notice of Filing in this docket and the Postal Service Comments in PRC Docket No. A2010-3, the appeal should be denied.

Respectfully submitted,

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