

formally closed[.]”⁵ and that it has been working with Birmingham customers on providing them services, with the expectation that a contract station will be established in the vicinity of the Birmingham Green station.

The Postal Service musters an extensive review of legislative history and case law to support its position “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.”⁶ The Service argues at length that Congress, in enacting § 404(b), intended to limit the term “post office” to a definition predating the Reorganization Act that distinguishes between independent post offices and their subordinate retail facilities such as stations and branches.⁷ The Service also cites judicial authority in support of the restrictive interpretation of “post office” it urges.⁸ Most notably, it invokes the decision in *Shepard Community Association v. United States Postal Service*,⁹ in which a United States District Court found convincing indications of Congressional intent to distinguish post offices from branches and stations for purposes of applying § 404(b), and accordingly ruled that § 404(b) did not apply to the contested closing of the Shepard station in Columbus, Ohio.

Analysis of Jurisdictional Applicability

The available documentary evidence concerning the Birmingham Green facility, and the nature of the Postal Service’s actions affecting it, are somewhat opaque. The Service asks the Commission to infer that operations at the facility have been “suspended,” based on the absence of a formal announcement of its closure in the Postal Bulletin.¹⁰ However, Postmaster Barrett’s letter of August 27, 2003, publicly discloses an official intention to close the facility, with post office boxes and other services to be provided at the Main Post Office.

At the same time, his apparently contemporaneous administrative responsibility for the Birmingham Green

facility implies that its closure would not constitute a statutory “consolidation,” which has been found to have “the characteristic of subordinating the day to day overall management of one office having a postmaster to the administrative personnel of another office.”¹¹ If Postmaster Barrett already had administrative responsibility for the Birmingham Green facility, closing it would not appear to constitute a “consolidation” subject to review under § 404(b). Yet, apparently two months earlier, the Postal Service at some administrative level had prepared an analysis on the “Proposal to Consolidate the Birmingham Green Station and Establish a Contract Postal Unit,” which petitioners have provided as an attachment to their appeal.

Notwithstanding these unclear circumstances, the Commission finds that the available facts support a conclusion that the Postal Service’s actions regarding the Birmingham Green facility—whether considered as a “closing” or a “suspension”—affect a “station or branch” within the service area administered by the Birmingham post office, and thus do not fall within the ambit of the review process provided in 39 U.S.C. 404(b).

The Commission’s action in an earlier proceeding, docket no. A82–10, provides useful guidance in this controversy. In that docket, petitioners contested the Postal Service’s plan to close the Oceana Station in Virginia Beach, Virginia. In its dispositive order,¹² the Commission considered legal arguments on what it regarded as a threshold issue: whether § 404(b) procedures for closing or consolidating post offices were applicable to the Service’s plan to close the Oceana Station.

In deliberating on this issue, the Commission held that the Postal Service decision to close the facility “must be considered within the context of the Postal Service’s other actions in the area.”¹³ After examining the facts presented, the Commission found the proposed closing of the Oceana Station to be one component of a plan to reconfigure the network of postal facilities providing services to various communities in the Virginia Beach area. Employing a “rule of reason,” the Commission held that “the 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.”¹⁴ In light of the Service’s description of its actions in the Virginia Beach area, the Commission concluded “that the Postal Service is merely rearranging the retail facilities in the community[.]”¹⁵ and that the formal requirements of § 404(b) were not intended to apply to such changes. More broadly, the Commission stated that “the Postal Service is not required to follow the formal § 404(b) procedure when it is merely rearranging its retail facilities in a community, as it is doing in Virginia Beach.”¹⁶

Here, as in docket no. A82–10, the Postal Service’s action affects one classified station of several in a metropolitan area: in this instance, Birmingham, Alabama.¹⁷ The Postal Service represents that equal or superior service is available at the Birmingham Main post office, less than one-half mile away, but that it is also working to establish a contract station in the vicinity of the Birmingham Green station.¹⁸ 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, as with the Virginia Beach area in docket no. A82–10. For this reason, the Commission concludes that the procedural requirements of § 404(b) do not apply, and that the appeal of the Postal Service’s action regarding the Birmingham Green station does not fall within the Commission’s jurisdiction under that section.¹⁹ Therefore, the Postal Service’s motion to dismiss this proceeding shall be granted.

The joint petition for review was accompanied by an application for suspension of the Postal Service’s action regarding the Birmingham Green station. Inasmuch as the Commission has found § 404(b) inapplicable to the Service’s action, the motion for suspension must also be denied.

Ordering Paragraphs The Commission orders:

(a) The United States Postal Service Motion to Dismiss Proceeding, filed October 3, 2003, is granted.

(b) Petitioners’ Application for Suspension, filed September 17, 2003, is denied.

⁵ Id. at 1. (Footnote omitted.)

⁶ Id. at 2.

⁷ Id. at 3–9.

⁸ Id. at 9–14.

⁹ *Shepard Community Association v. United States Postal Service*, Civ. No. C2–82–425 (S.D. Ohio 1985).

¹⁰ Postal Service Motion to Dismiss, supra, at 1, n. 4.

¹¹ *Knapp v. United States Postal Service*, 449 F. Supp. 158, 162 (C.D. Cal. 1978).

¹² Order No. 436, Order Dismissing Docket No. A82–10, June 25, 1982.

¹³ Id. at 7.

¹⁴ Id. at 6–7.

¹⁵ Id. at 8.

¹⁶ Id. at 1.

¹⁷ Id., Attachment No.1, p. 3–7.

¹⁸ Postal Service Motion to Dismiss, supra, at 1–2.

¹⁹ The Commission views this outcome as compatible with, if not in every respect identical to, the court’s analysis in the *Shepard* decision, supra.