

[ORAL ARGUMENT NOT SCHEDULED]
IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

VENICE STAKEHOLDERS
ASSOCIATION, *et al.*,

Petitioners,

v.

POSTAL REGULATORY COMMISSION,

Respondent.

No. 12-1110

RESPONDENT’S MOTION TO DISMISS

Petitioners, the Venice Stakeholders Association and seven other individuals or organizations, seek review of a final order of the Postal Regulatory Commission.¹ The Commission’s order dismissed the petitioners’ administrative appeal challenging the United States Postal Service’s decision to transfer retail operations from the main post office in Venice, California, to an annex facility across the street. The petitioners bring this petition under 39 U.S.C. § 3663, which provides generally for review of final Commission decisions “in accordance with” section 706 of the Administrative Procedure Act.

¹ The other petitioners are Mark Ryavec, Greta Cobar, Jonathan Kaplan, Sue Kaplan, Jethro Pauker, James Smith, and the Free Venice Beachhead newspaper.

As explained in the motion to dismiss that the Commission recently filed in a parallel case, *Mittleman v. Postal Regulatory Commission*, No. 12-1095 (D.C. Cir.), petitioners are not entitled to judicial review of the agency's decision. Although Congress has empowered the Commission to review "determination[s] of the Postal Service to close or consolidate any post office," 39 U.S.C. § 404(d)(5), it has also mandated that "[t]he provisions of . . . chapter 7 of title 5 shall not apply to any review carried out by the Commission under this paragraph." *Id.* That sentence precludes the petitioners from obtaining the APA review they would otherwise receive under 39 U.S.C. § 3663. Accordingly, for the same reasons identified in the *Mittleman* case, this petition should be dismissed.

The United States Postal Service, the respondent in the administrative appeal, has moved to intervene in this proceeding. The Postal Service has authorized us to state that it supports this motion to dismiss.

STATEMENT

A. Statutory Background

In 1970, Congress enacted the Postal Reorganization Act, which created the United States Postal Service as an "independent establishment of the executive branch of the Government of the United States." 39 U.S.C. § 201. Among the

specific powers granted to this new entity was the authority to “determine the need for post offices . . . and to provide such offices . . . as it determines are needed.”

Id. § 404(a)(3); *see also id.* § 403(b)(3) (delegating to the Postal Service the “responsibility” to “establish and maintain postal facilities of such character and in such locations, that postal patrons throughout the Nation will, consistent with reasonable economies of postal operations, have ready access to essential postal services”).

To encourage the Postal Service to exercise that authority in accordance with the goals of federal postal policy, Congress later established certain procedural requirements regulating the Postal Service’s decision to close or consolidate an existing post office. *See* Postal Reorganization Act Amendments of 1976, Pub. L. No. 94-421, § 9(a) (1976) (codified, as amended, at 39 U.S.C. § 404(d)). In undertaking such a decision, the Postal Service must consider various factors, including the effect on the community served; the effect on postal employees; the statutory goal of “provid[ing] a maximum degree of effective and regular postal services” to communities “where post offices are not self-sustaining”; the economic savings; and “other factors” deemed necessary by the Postal Service. 39 U.S.C. § 404(d)(2)(A)(i)-(v). Any determination to close or consolidate a post office must be made in writing and must include findings with

respect to the foregoing considerations. *Id.* § 404(d)(3). Moreover, certain notice must be given to “persons served” by the post office both before and after a final determination is made to close or consolidate that facility. *Id.* § 404(d)(1), (4).

To ensure compliance with those requirements, Congress has provided an avenue for limited administrative review. “A determination of the Postal Service to close or consolidate any post office may be appealed by any person served by such office to the Postal Regulatory Commission,” *id.* § 404(d)(5), which then “review[s] such determination on the basis of the record before the Postal Service,” *id.* The Commission is required to set aside the determination if it finds it to be “(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (B) without observance of procedure required by law; or (C) unsupported by substantial evidence on the record.” *Id.* If so, the Commission may “order that the entire matter be returned [to the Postal Service] for further consideration,” but it may not “modify the determination.” *Id.*

In addition to circumscribing the scope of administrative review, Congress has taken steps to ensure that appeals proceed efficiently. In recognition of the need for prompt resolution of the appeals, the Commission must issue its decision no later than 120 days after a petition is received. *Id.*; *see also id.* § 404(d)(6). Moreover, the Commission need not comply with the formal hearing requirements

of the APA in conducting its review. *Id.* § 404(d)(5) (exempting Commission from compliance with 5 U.S.C. §§ 556 and 557). And Congress expressly provided that the judicial review provisions of the APA—“[t]he provisions of . . . chapter 7 of title 5”—“shall not apply to any review carried out by the Commission under this paragraph.” *Id.*

B. Facts and Prior Proceedings

1. In recent years, the Postal Service has suffered severe financial strain. Among other initiatives, the Postal Service has explored ways to cut costs by streamlining its network of retail postal facilities.

This case concerns the Venice Post Office, a retail postal facility operated by the Postal Service in Venice, California, a district of the City of Los Angeles. The Post Office building, located at 1601 Main Street, possesses “historic significance” and contains a prominent mural inside the building’s lobby. Ex. A (PRC Order No. 1166) at 3.

In 2010, the Postal Service initiated plans to sell the Post Office building and to relocate its retail services to the Venice Carrier Annex, an existing postal facility located at 313 Grand Boulevard, some 400 feet away. *See id.* at 2-3, 6. The Postal Service then conducted consultations with community members. *Id.* at 3. In July 2011, following final approval by its headquarters staff, the Postal

Service publicly announced its decision to relocate the retail postal services from the Post Office to the Carrier Annex. *Id.* at 4.

In August 2011, an attorney for the Venice Stakeholders Association (“VSA”), a nonprofit civic improvement organization, sent a letter to the Postal Service expressing concern about the relocation and requesting that the Postal Service withdraw its plans. The next month, the Postal Service’s Vice President, Network Operations responded to the VSA’s letter by issuing a final decision declining to set aside the Postal Service’s planned relocation. *See Ex. B (Final Decision Regarding Relocation of Retail Services in Venice, California).*

2. On October 17, 2011, the VSA and Mark Ryavec filed an administrative petition with the Commission under 39 U.S.C. § 404(d)(5) seeking review of the Postal Service’s decision. *See Ex. C (Petition for Review of Decision to Close Venice Main Post Office).* The VSA argued that the planned transfer of retail operations was not truly a relocation, but rather a partial or constructive “closure” of the Venice Post Office, and that this “closure” had failed to comply with the statutory requirements of 39 U.S.C. § 404(d) and other regulations. *See id.*

¶¶ 2(a)-(l).

Subsequently, eight other persons made submissions to the Commission challenging the same Postal Service decision.² In addition to echoing the VSA's contentions about the failure to comply with section 404(d), these persons made several additional arguments, including that the sale of the existing Post Office building would jeopardize public access to the historic mural; that the relocation would burden local residents through increased traffic and parking difficulties; and that other alternatives, such as selling the Carrier Annex, would yield a greater financial benefit to the Postal Service. *See, e.g.*, Ex. D (Petition for Review by Greta Cobar).

On October 27, 2011, the Postal Service moved to dismiss the administrative proceedings, arguing that 39 U.S.C. § 404(d) did not apply to this dispute. *See* Ex. A at 2. The Postal Service explained that its plans “‘d[id] not involve the discontinuance of a facility,’” but instead concerned only “‘the relocation of the Venice Main Post Office.’” *Id.* at 5. It also asserted that the transfer would not cause any “‘reduction in the level of service provided to the Venice community.’” *Id.*

² These other persons were Greta Cobar, Jonathan Kaplan, Sue Kaplan, Lydia Matkovich, Jethro Pauker, Councilmember Bill Rosendahl, James Smith, and the Free Venice Beachhead newspaper. With the exception of Ms. Matkovich and Councilmember Rosendahl, all are also petitioners in the proceeding before this Court.

Following the VSA's submission of a merits brief and filings by several other participants, the Commission dismissed the petitioners' appeal on January 24, 2012.³ *See generally* Ex. A. Citing and applying various of its precedents, the Commission reaffirmed that "Postal Service decisions to relocate a post office are not subject to appeal under 39 U.S.C. § 404(d)." *Id.* at 6. The Commission also rejected the petitioners' arguments that the relocation amounted to a partial or constructive closure of the Venice Post Office, explaining that the administrative record supplied no basis for concluding that Venice residents would "be left without a retail facility." *Id.* at 7-8.⁴

3. This petition followed. *See* Ex. E (Petition for Review) at 1. In seeking this Court's review, the petitioners rely solely upon 39 U.S.C. § 3663, which

³ Among these filings was a submission by the Commission-appointed Public Representative supporting dismissal of the appeal. The Public Representative argued that the transfer of retail operations from the Post Office building to the Carrier Annex constituted a relocation, not a closing within the meaning of 39 U.S.C. § 404(d). *See* Ex. A at 6.

⁴ The *Mittleman* case (No. 12-1095) challenges a similar Commission decision. In that case, as part of its realignment of retail postal services in the Falls Church, Virginia area, the Postal Service discontinued a facility known as the Pimmit Branch while opening a new facility 1.7 miles away. The Commission dismissed the appeal, finding that this rearrangement of services did not fall within the scope of 39 U.S.C. § 404(d). *See* Order No. 1159, PRC Docket No. A2011-90 (Pimmit Branch, Falls Church, Virginia) (Jan. 20, 2012), *available at* http://www.prc.gov/Docs/79/79832/Order_No_1159.pdf. The Commission has moved to dismiss the *Mittleman* case for the same reasons set forth in this motion.

allows any person “adversely affected or aggrieved by a final order or decision” of the Commission to obtain review by this Court “in accordance with section 706 of title 5.” 39 U.S.C. § 3663.

ARGUMENT

Congress Has Expressly Barred Judicial Review Of Commission Orders Issued Under 39 U.S.C. § 404(d)(5)

The petitioners seek judicial review of the Commission’s decision adjudicating an administrative appeal filed under 39 U.S.C. § 404(d)(5). But Congress, in vesting exclusive authority in the Commission to consider customer appeals of post office closure or consolidation determinations, has expressly precluded APA review of the Commission’s ensuing decisions. Accordingly, and for the same reasons explained by the Commission in its motion to dismiss the *Mittleman* case (No. 12-1095), this petition for review should be dismissed.

1. Through 39 U.S.C. § 404(d)(5), Congress established a form of appellate oversight over Postal Service determinations to close or consolidate post offices by permitting affected customers to seek speedy review of those determinations by the Commission. But Congress also took care to ensure that the Postal Service’s management decisions would not become the subject of protracted and burdensome litigation. Indeed, although Congress had considered the possibility

of allowing for judicial review of post office closures and consolidations, *see* 122 Cong. Rec. 27,100-27,109 (1976) (debate on Senate amendment), the conference committee ultimately rejected that approach, instead deciding to provide exclusively for review by an expert agency. *See* H.R. Rep. No. 94-1444, at 18 (1976) (Conf. Rep.) (noting committee’s decision to provide for Commission review “instead” of judicial review); 122 Cong. Rec. 28,565 (1976) (statement of Sen. Randolph) (similar).

Thus, the statute expressly declares that “[t]he provisions of . . . chapter 7 of title 5 shall not apply to any review carried out by the Commission under this paragraph.” 39 U.S.C. § 404(d)(5). Chapter 7 of Title 5, entitled “Judicial Review,” is part of the Administrative Procedure Act. Among other provisions, Chapter 7 of the APA includes a partial waiver of the United States’ sovereign immunity, 5 U.S.C. § 702; a cause of action for review of “final agency action,” *id.* § 704; and an enumeration of the bases upon which such agency action may be held unlawful and set aside, *id.* § 706. By expressly exempting the Commission’s decisions under section 404(d)(5) from these provisions of Chapter 7—and by channeling customer complaints about post office closures to a speedy, expert

administrative process—Congress manifested its intent to preserve judicial resources and preclude the type of additional review that the petitioners seek here.⁵

A similar provision in the same chapter of Title 39 underscores this interpretation. That provision, 39 U.S.C. § 410(a), states (in relevant part) that “no Federal law dealing with public or Federal contracts, property, works, officers, employees, budgets, or funds, *including the provisions of chapters 5 and 7 of title 5*, shall apply to the exercise of the powers of the Postal Service.” 39 U.S.C. § 410(a) (emphasis added). This Court has repeatedly recognized that section 410(a) exempts the Postal Service from “traditional APA review.” *Aid Ass’n for Lutherans v. U.S. Postal Serv.*, 321 F.3d 1166, 1168, 1172 (D.C. Cir. 2003); *see also Carlin v. McKean*, 823 F.2d 620, 622-24 (D.C. Cir. 1987) (generally observing that “the APA is not applicable ‘to the exercise of the powers of the Postal Service’” and concluding that section 410(a) barred judicial review of decision dismissing Postmaster General); *Nat’l Easter Seal Soc’y for Crippled Children & Adults v. U.S. Postal Serv.*, 656 F.2d 754, 766-67 (D.C. Cir. 1981)

⁵ The number of customer appeals filed under section 404(d)(5) varies significantly from year to year, depending upon the number of retail postal facilities discontinued by the Postal Service. In the past twelve months, the Commission has ruled on approximately 200 appeals. *See generally* <http://www.prc.gov/prc-pages/library/dockets.aspx?activeview=DocketView&docketType=AppealPOClosing> (last visited Mar. 30, 2012).

(generally construing section 410(a) as “exempt[ing] the Postal Service from the APA”).⁶ Moreover, every Circuit to have addressed the question has concluded that section 410(a) bars judicial review of Postal Service actions under the APA. *See Currier v. Potter*, 379 F.3d 716, 725 (9th Cir. 2004); *Booher v. U.S. Postal Serv.*, 843 F.2d 943, 944-45 (6th Cir. 1988); *Harrison v. U.S. Postal Serv.*, 840 F.2d 1149, 1155 (4th Cir. 1988); *see also Peoples Gas, Light & Coke Co. v. U.S. Postal Serv.*, 658 F.2d 1182, 1191-92 (7th Cir. 1981) (noting Postal Service’s “exemption from the provisions of the [APA],” but finding alternative basis for judicial review); *cf. Banknote Corp. of Am., Inc. v. United States*, 365 F.3d 1345, 1351 (Fed. Cir. 2004) (observing that “actions by the USPS are not normally subject to APA review,” but finding the argument waived); *Top Choice Distribs., Inc. v. U.S. Postal Serv.*, 138 F.3d 463, 465 n.1 (2d Cir. 1998) (also finding the argument waived); *UPS Worldwide Forwarding, Inc. v. U.S. Postal Serv.*, 66 F.3d 621, 629 n.8 (3d Cir. 1995) (same).⁷

⁶ In *Aid Association for Lutherans*, this Court ultimately concluded that the statutory bar of 39 U.S.C. § 410(a) did not prevent a federal district court from adjudicating a claim that the Postal Service had “exceeded its statutory authority” and “act[ed] *ultra vires*.” 321 F.3d at 1173. In this case, however, the petitioners have identified no basis for applying that limited exception.

⁷ In *Air Courier Conference of America v. American Postal Workers Union, AFL-CIO*, 498 U.S. 517 (1991), the Supreme Court declined to decide whether section 410(a) barred judicial review under the APA, holding that the government

2. The statute upon which petitioners rely, 39 U.S.C. § 3663, affords no basis for judicial review under these circumstances. Section 3663 provides:

A person, including the Postal Service, adversely affected or aggrieved by a final order or decision of the Postal Regulatory Commission may, within 30 days after such order or decision becomes final, institute proceedings for review thereof by filing a petition in the United States Court of Appeals for the District of Columbia. *The court shall review the order or decision in accordance with section 706 of title 5, and chapter 158 and section 2112 of title 28, on the basis of the record before the Commission.*

39 U.S.C. § 3663 (emphasis added). While Section 3663 thus ordinarily authorizes actions in this Court to review Commission decisions under the APA, Congress has made clear that the APA “shall not apply” to Commission decisions reviewing post office closure or consolidation determinations.⁸ *Id.* § 404(d)(5);

had waived the argument. *See id.* at 523 n.3. Three justices concurred in the judgment, but solely on the grounds that the statute indeed precluded APA review: “There is no ambiguity in the text of 39 U.S.C. § 410(a). That section of the Postal Reorganization Act provides that the judicial review provisions of the Administrative Procedure Act (APA) do not apply to the exercise of the powers of the Postal Service.” *Id.* at 531 (Stevens, J., concurring).

⁸ Section 3663’s reference to Chapter 158 of Title 28, known as the Hobbs Act, does not establish an alternative basis for review. “While the Hobbs Act specifies the form of proceeding for judicial review of [certain agency] orders, it is the Administrative Procedure Act (APA) that codifies the nature and attributes of judicial review[.]” *I.C.C. v. Bhd. of Locomotive Eng’rs*, 482 U.S. 270, 282 (1987) (internal citation omitted); *see also, e.g., BNSF Ry. Co. v. U.S. Dep’t of Transp.*, 566 F.3d 200, 203 (D.C. Cir. 2009) (conducting Hobbs Act review using the

cf. Lundeen v. Mineta, 291 F.3d 300, 305-11 (5th Cir. 2002) (concluding that 23 U.S.C. § 134(f)(2), which specifies that certain agency conduct “shall not be reviewable by any court under . . . chapter 7 of title 5,” precluded APA review notwithstanding that another provision of Title 23, “if read in a vacuum,” would seem to support APA review).

Section 3663 was enacted in 2006 as part of the Postal Accountability and Enhancement Act (“PAEA”), Pub. L. No. 109-435, § 205, 120 Stat. 3198, 3216-17 (2006)—a law which, among other things, replaced the Postal Rate Commission with the Postal Regulatory Commission. In the same enactment, Congress transferred the Postal Rate Commission’s authority to review post office closure or consolidation determinations to the Postal Regulatory Commission, *see id.* § 604(a), 120 Stat. at 3241, and enacted a new provision specifying when an administrative petition under section 404(d)(5) is deemed to be “received” by the Commission, *id.* § 1006(a), 120 Stat. at 3258 (codified at 39 U.S.C. § 404(d)(6)).⁹

“standards set forth in the APA”).

⁹ The PAEA also restructured Title 39 in certain respects. For example, prior to the PAEA, the substantive provisions codified at 39 U.S.C. § 404(d)(5) had appeared at 39 U.S.C. § 404(b)(5). *See* PAEA § 1010(e), 120 Stat. at 3261 (redesignating 39 U.S.C. § 404(b), as amended, as 39 U.S.C. § 404(d)).

“[G]eneral language of a statutory provision . . . will not be held to apply to a matter specifically dealt with in another part of the same enactment.” *Bloate v. United States*, 130 S. Ct. 1345, 1354 (2010) (quotation marks omitted). By amending portions of section 404(d)—even as it repealed or replaced many other provisions of Title 39, *see, e.g.*, Pub. L. No. 109-435, §§ 201(a)-(b), 205, 404(a), 503(a), 1002(a)—Congress evinced its intent that the terms of section 404(d)(5) that remained unchanged continue to be given effect. *See, e.g., United Ass’n of Journeymen & Apprentices of Plumbing & Pipe Fitting Indus., AFL-CIO v. Reno*, 73 F.3d 1134, 1140 (D.C. Cir. 1996) (rejecting “partial repeal” argument and emphasizing need to “reconcile two seemingly inconsistent provisions in the same legislation” by allowing specific, not general, provision to control). In particular, Congress retained the provision precluding APA review of Commission decisions under 39 U.S.C. § 404(d)(5). Accordingly, there is no basis for allowing such review in this case.

CONCLUSION

For the foregoing reasons, the petition for review should be dismissed.

Respectfully submitted,

/s/ Jeffrey E. Sandberg

Of Counsel:

STUART F. DELERY

Acting Assistant Attorney General

STEPHEN L. SHARFMAN

General Counsel

MICHAEL S. RAAB

(202) 514-4053

R. BRIAN CORCORAN

Deputy General Counsel

Postal Regulatory Commission

JEFFREY E. SANDBERG

(202) 532-4453

Attorneys, Appellate Staff

Civil Division, Room 7261

Department of Justice

950 Pennsylvania Avenue, NW

Washington, D.C. 20530

APRIL 2012

**CERTIFICATE OF COUNSEL
AS TO PARTIES, RULINGS, AND RELATED CASES**

A. Parties and Amici.

The petitioners in this Court are the Venice Stakeholders Association, Mark Ryavec, Greta Cobar, Jonathan Kaplan, Sue Kaplan, Jethro Pauker, James Smith, and the Free Venice Beachhead newspaper. The respondent in this Court is the Postal Regulatory Commission. The United States Postal Service was the respondent in the administrative appeal before the Commission, and has moved to intervene in this proceeding. Two other individuals, Lydia Matkovich and Councilmember Bill Rosendahl, participated in the action before the Commission, but have not sought to participate in the current proceeding. Counsel for the Commission are not aware of any other parties, intervenors, or amici who appeared in the administrative proceeding or who have appeared before this Court.

B. Rulings Under Review.

Petitioners seek review of Order No. 1166 of the Postal Regulatory Commission, which was issued in Docket No. A2012-17 (Venice Post Office, Venice, California) on January 24, 2012. That order is attached as Exhibit A.

C. Related Cases.

This case has not previously been before this Court or any other court.

Another matter pending before this Court, *Mittleman v. Postal Regulatory Commission*, No. 12-1095 (D.C. Cir.), presents substantially the same legal questions, including (1) whether decisions of the Postal Regulatory Commission rendered under 39 U.S.C. § 404(d)(5) are subject to judicial review in this Court under the APA and (2) assuming such review is available, whether the Commission correctly determined that the relocation or realignment of retail postal services within a community falls outside the scope of 39 U.S.C. § 404(d). Elaine J. Mittleman, who is counsel for petitioners in this case, is the petitioner in the *Mittleman* case.

Additionally, *McClung v. Postal Regulatory Commission*, No. 12-1157 (D.C. Cir.), appears to present the same threshold issue concerning the availability of judicial review in this Court under the APA. In that case, the Commission determined that the closure of a post office had occurred within the meaning of 39 U.S.C. § 404(d), and proceeded to affirm the Postal Service's determination. Ms. Mittleman is also counsel for the petitioners in that case.

Counsel for appellees are otherwise not aware of any related cases within the meaning of D.C. Circuit Rule 28(a)(1)(C).

Respectfully submitted,

/s/ Jeffrey E. Sandberg
Jeffrey E. Sandberg
Counsel for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2012, I electronically filed the foregoing with the Court's CM/ECF system. All participants in this case are registered CM/ECF users and will be served through the CM/ECF system.

/s/ Jeffrey E. Sandberg
Jeffrey E. Sandberg
Counsel for Respondent

Exhibit A

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

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton; and
Robert G. Taub

Venice Post Office
Venice, California

Docket No. A2012-17

ORDER GRANTING MOTION TO DISMISS

(Issued January 24, 2012)

I. INTRODUCTION AND SUMMARY

On October 17, 2011, Mark Ryavec and Venice Stakeholders Association (Petitioners) petitioned the Commission for review of the Postal Service's decision to relocate the Venice, California main post office (Venice main post office).¹ In Order No. 918, the Commission gave notice of the appeal, designated a Public

¹ Petition for Review and Application for Suspension of Determination received from Mark Ryavec and Venice Stakeholders Association, October 17, 2011 (Petition). Subsequently, on October 21 and 24, 2011, several additional generally similar petitions for review were filed by Lydia Matkovich, Jonathan Kaplan, Greta Cobar, Sue Kapla, and Jethro Parker. In addition, petitions for review were filed on October 24, 2011 by Bill Rosendahl, City of Los Angeles Councilmember, 11th District, and James Smith individually and on behalf of the Free Venice Beachhead newspaper. Given the disposition of the appeal, the Commission need not address the timeliness of any of the petitions for review.

Representative, and established a procedural schedule.² On October 27, 2011, the Postal Service moved to dismiss the appeal, contending that its actions constituted a relocation of a post office and thus were not subject to 39 U.S.C. § 404(d).³ Without waiving its position that its actions were not reviewable under section 404(d), the Postal Service filed an administrative record in response to Order No. 967.⁴

Petitioners filed their initial brief and opposition to the motion to dismiss on December 9, 2011.⁵ They also filed a reply brief on January 10, 2012.⁶ They argue that the Postal Service's decision to vacate and sell the building that currently houses the Venice main post office amounts to the closing of a post office that may be appealed to the Commission. For the reasons set out below, the Commission dismisses the appeal.

II. BACKGROUND

Venice, California is an unincorporated neighborhood of Los Angeles. Venice houses two Postal Service facilities—the Venice main post office and the Venice carrier annex. On December 23, 2010, the Postal Service's Vice President for the Pacific Area approved a proposal to relocate retail services from the main post office to the carrier annex. Administrative Record, Item 2 at 8.

² Notice and Order Accepting Appeal and Establishing Procedural Schedule, October 20, 2011, Order No. 918.

³ Motion of United States Postal Service to Dismiss Proceedings, October 27, 2011 (Motion to Dismiss); see also Response of United States Postal Service to Petitioner's Application for Suspension of Determination for the Venice main post office, Venice, California 90291, October 27, 2011 (Postal Service Response to Motion to Dismiss).

⁴ United States Postal Service Response to Order No. 967, December 2, 2011 (Administrative Record). See Order Adjusting Procedural Schedule, November 16, 2011, Order No. 967.

⁵ Petitioners Venice Stakeholders Association and Mark Ryavec's Initial Brief and Opposition to Motion to Dismiss Appeal of Post Office Closure, December 9, 2012 (Petitioners' Initial Brief). Petitioners sought and Petitioners were granted permission to respond to the motion to dismiss in their initial brief. Order Adjusting Procedural Schedule, November 16, 2011 (Order No. 967).

⁶ Reply Brief of Petitioners Venice Stakeholders Association and Mark Ryavec, January 10, 2012.

On March 3, 2011, the Postal Service informed the Mayor of Los Angeles

that it would be in the best interest of the Postal Service to relocate the retail services currently located at 1601 Main Street in Venice, California directly across the street to our facility at 313 Grand Boulevard in Venice, California.

Id. Item 5. The Venice post office at 1601 Main Street is a building of some historic significance. *Id.* Item 7 at 9. It contains 23,700 square feet, five customer windows for retail service, and 2,152 post office boxes. *Id.* Item 2 at 2, 4. The carrier annex at 313 Grand Boulevard contains 15,890 square feet, no customer windows, and no post office boxes. *Id.* The Postal Service estimates that it would cost \$375,000 to renovate the carrier annex for retail service through two customer windows. Petitioners' Initial Brief at 3.

On April 26, 2011, the Postal Service held a public meeting to share information about the proposed move and to hear comments from the community. Administrative Record, Item 7 at 1, 3. At the meeting, residents expressed concern about preserving the building and maintaining public access to a mural in the building. *Id.* Item 13. The Postal Service informed attendees that they could submit written comments on the proposed relocation up until May 17, 2011. *Id.* Item 7 at 15. The comment period remained open until June 1, 2011. *Id.* Item 15.

On May 2, 2011, Postal Service representatives met with the Venice Neighborhood Council and members of the community "to listen to views and concerns regarding the relocation of retail services to the Annex." *Id.* Item 14 at 2. The main concerns expressed were the preservation of the historic building and its mural, as well as the appearance of a portion of the annex property that is overgrown with weeds. *Id.*

On May 15, 2011, Petitioners sent a letter to the Postal Service opposing the sale of the Venice main post office. The letter states that the post office

represents one of the few remaining Works Projects Administration projects in our community. The murals in its foyer depict notable moments in our community's history.

We are concerned that the protection afforded by the State Historic Preservation designation...will not ultimately prevent demolition....

Further,...the Postal Service cannot assure that the historic foyer of the building would remain open to the public once the property is sold to a private party.

Id. Item 9 at 1. On May 26, 2011, then-counsel for Petitioners wrote to the Postal Service requesting that the Postal Service obtain a permit from the California Coastal Commission before moving to the carrier annex or else abandon the relocation altogether “given that the intensification of use proposed by the Post Office is simply not consistent with the constraints of the surrounding neighborhood.” *Id.* Item 11 at 4.

On July 7, 2011, the manager of the Pacific Area Facilities Services Office sought approval from Postal Service Headquarters to relocate retail services from the Venice main post office to the Venice carrier annex. *Id.* Item 14. The request described the Postal Service’s interaction with the community up to that point and explained that community opposition to the relocation stemmed from desire for (1) Coastal Zone compliance; (2) preservation of the historic building; (3) cleaning up the annex site; and (4) keeping the Venice Neighborhood Council informed. *Id.* at 2. Headquarters granted approval for the relocation on July 12, 2011. *Id.* at 3. The Postal Service announced the approval in a letter to the Mayor of Los Angeles and in a press release on July 18, 2011. *Id.* Items 15-16. Both the letter and the press release stated that the approval could be appealed within 15 days and provided the address to which appeals could be sent. Several organizations and individuals appealed. *See id.* Item 18.

On September 23, 2011, the Vice President, Network Operations, transmitted to then-counsel for Petitioners the Postal Service’s final decision upholding the relocation. *Id.* Item 23. In that decision, the Postal Service classified customer concerns as relating to historic preservation of the main post office and the environmental impact of renovating the carrier annex to become a retail outlet. *Id.* at 2-3.

Addressing customers’ concerns about the disposition of the Venice main post office, the Postal Service has represented on several occasions that the historic

characteristics of the building, including the mural contained therein, will be maintained through covenants conveyed to a future buyer as an attachment to the deed. *Id.* Item 7 at 9; Item 15 at 1; see *also* Motion to Dismiss at 2-3.

III. PARTICIPANT PLEADINGS

Postal Service. The Postal Service asserts that relocating a retail facility within the community is not a closing of a post office. It cites several Commission orders dismissing appeals for this reason. Motion to Dismiss at 3-6; Postal Service Response to Motion to Dismiss at 2.

This matter concerns the relocation of the Venice Main Post Office, an action governed by 39 C.F.R. § 241.4, and it does not involve the discontinuance of a facility. After the relocation, the Postal Service will continue to operate a Post Office in the Venice community, and there will be no reduction in the level of service provided to the Venice community.

Postal Service Response to Motion to Dismiss at 1.

Furthermore, the Venice Carrier Annex, unlike the Venice Main Post Office, has space to accommodate both retail services and delivery operations and has adequate space for customer parking and the move will reduce costs for the Postal Service while still providing customers with the same level of service.

Motion to Dismiss at 6 (footnote omitted).

Petitioners. Petitioners offer three bases for their contention that the proposed move of retail services is a closing rather than a relocation. First, Petitioners argue that

a very real possibility exists that the [Venice post office] is sold well before the Annex renovations are complete, leaving the Venice community with no post office for an indefinite period of time. Or, worse yet, the USPS could abandon its decision to renovate the Annex, leaving the Venice community with no post office and no remedy.

Petitioners' Initial Brief at 5. Second, "it appears the proposed Annex expansion will so dramatically reduce the services available to the Venice community as to constitute a closure." *Id.* Third, "if this really were a relocation as the USPS claims, the USPS

would have to comply with the requirements of 39 C.F.R. § 241.4, which it [has] not done.” *Id.* at 8.

Public Representative. The Public Representative supports dismissal of the appeal.⁷ Relying primarily on *Steamboat Springs*, he states that the move of retail facilities is occurring within the community of Venice and is a distance of 400 feet.⁸ PR Response to Motion to Dismiss at 3. In *Steamboat Springs*, the Commission found a move of 1.3 miles within the community to constitute a relocation, not a closing. The Public Representative considers the circumstances occurring in Venice to be analogous to those in *Steamboat Springs*.

IV. COMMISSION ANALYSIS

The Postal Service plans to move its retail facility in Venice, California 400 feet across the street. Administrative Record, Item 5. The Commission has held in several cases that Postal Service decisions to relocate a post office are not subject to appeal under 39 U.S.C. § 404(d).⁹ In its order dismissing the *Oceana* appeal, the Commission stated

If the Postal Service had decided to close the *Oceana* station and build a new facility across the street, the action would not be a closing within the meaning of the statute.

Oceana at 8. In *Oceana*, the Postal Service planned to close one station (*Oceana*) and move the post office boxes and retail windows to another station (*London Bridge*)

⁷ Public Representative Response to United States Postal Service Motion to Dismiss Proceedings, January 20, 2012 (PR Response to Motion to Dismiss). The Public Representative also filed a motion for late acceptance of his response. Motion of Public Representative for Late Acceptance of Response, January 20, 2012. That motion is granted.

⁸ See Docket No. A2012-2, Order Dismissing Appeal, Order No. 448, April 27, 2010 (*Steamboat Springs*).

⁹ See Docket No. A2011-21, Order Granting Motion to Dismiss, Order No. 804, August 15, 2011 (*Ukiah*); Docket No. A2007-1, Order Dismissing Appeal on Jurisdictional Grounds, Order No. 37, October 9, 2007 (*Ecorse*); Docket No. A2003-1, Order Dismissing Appeal on Jurisdictional Grounds, Order No. 1387, December 3, 2003 (*Birmingham Green*); Docket No. A86-13, Order Dismissing Docket No. A86-13, Order No. 696, June 10, 1986 (*Wellfleet*); Docket No. A82-10, Order Dismissing Docket No. A82-10, Order No. 436, June 25, 1982 (*Oceana*).

one-quarter mile away. *Oceana* at 3, 5. The Postal Service was also building a new post office and making improvements to other post offices in the Virginia Beach area.

Id. at 4-5. The Commission found that

the Postal Service's actions complained of do not constitute a closing or a consolidation of a post office, but rather, when viewed in light of the Postal Service's decisions regarding the area, are a relocation of facilities within the community.

Id. at 6. Here, the Postal Service proposes to relocate one facility in Venice and improve another across the street. Petitioners face a difficult task in distinguishing the Venice post office move from the circumstances in *Oceana* and its progeny.¹⁰

Petitioners express concern that the Postal Service will sell and vacate the Venice main post office before it finishes renovating the carrier annex. Petitioners' Initial Brief at 5. Petitioners also fear that the Postal Service will find the costs of renovating the carrier annex to be much greater than estimated and then abandon the project. *Id.* Under this scenario, Venice would be left without a retail facility. Petitioners support the likelihood of this scenario by presenting (1) a Postal Service notice that it is seeking a buyer for the main post office building, *id.* Exhibit F; (2) an affidavit that estimates renovation costs to be much larger than the Postal Service estimates, *id.* Exhibit G; and (3) the failure of the Postal Service to reveal renovation plans that comply with local building and environmental codes. *Id.* at 7.

The Postal Service's statements about the timing of its move undermine Petitioners' concerns. For example, the implementation schedule for the move lists "Renovate Existing Postal Space" before "Move Operations to Alternate Space." Administrative Record, Item 2 at 7. The fact that the main post office building is up for sale does not mean that the Postal Service's departure is imminent. For example, the carrier annex was for sale in Docket No. 2009-10. However, it is no longer for sale, and the Postal Service still occupies that building. See *id.* Item 13 at 1. A Postal Service

¹⁰ See also *Ukiah*, in which the Postal Service planned to move retail services from the Ukiah main post office to a carrier annex located 1 mile away. The Commission found the move to be a relocation, not a closing.

press release states that “*once the move is completed*, plans call for the sale of the building at 1601 Main St.” *Id.* Item 13 (emphasis added). A Postal Service spokesman was quoted in local media as saying that “[t]he Venice Post Office is expected to stay open through the remainder of this year and until the annex remodel *is completed*, possibly by the end of the first quarter of 2012.” (Emphasis added.)¹¹ It does not appear that Venice will be left without a retail facility.

Petitioners’ remaining claims that the relocation amounts to a “constructive closing” (Petitioners’ Initial Brief at 9-12) are not persuasive. To meet the community’s need for postal services, the Postal Service is renovating the carrier annex including the provision of retail window service and post office boxes.¹² The Postal Service indicates that there will be no change in post office box holders’ addresses or ZIP Code. Nor will the relocation affect mail delivery to residents and businesses. *Id.* Item 15 at 1.

The Postal Service’s actions are consistent with 39 U.S.C. § 403(b)(3) which authorizes it to “establish and maintain postal facilities of such character and in such locations, that postal patrons throughout the Nation will, consistent with reasonable economies of postal operations, have ready access to essential postal services.” Its planned relocation of the Venice main post office to the nearby carrier annex is not subject to review under section 404(d). Accordingly, the Postal Service Motion to Dismiss is granted and the appeal is dismissed.

V. CONCLUSION

The closing of the Venice main post office is part of a relocation of the retail facility in Venice. The Commission has consistently held that the procedures set forth in

¹¹ Vince Echavaria, “Postal Service puts post office up for sale despite appeals,” *The Argonaut*, October 5, 2011, as viewed January 15, 2012 at http://www.argonautnewspaper.com/articles/2011/10/06/news_-_features/top_stories2.txt.

¹² That the main post office may have five retail windows is not dispositive of current need. The record indicates that the Venice post office currently “earns” only two retail windows. See Administrative Record, Item 2 at 4.

Docket No. A2012-17

- 9 -

section 404(d) do not apply to such a relocation. Accordingly, this proceeding is dismissed.

It is ordered:

1. The Motion of United States Postal Service to Dismiss Proceedings, filed October 27, 2011, is granted.
2. Docket No. A2012-17 is dismissed for lack of jurisdiction and the docket is closed.
3. The Motion of Public Representative for Late Acceptance of Response, filed January 20, 2012, is granted.
4. All pending motions not granted herein are hereby denied.

By the Commission.

Shoshana M. Grove
Secretary

Chairman Goldway not participating.

Exhibit B



September 23, 2011

John A. Henning, Jr., Esq.
125 N. Sweetzer Avenue
Los Angeles, CA 90048

Dear Mr. Henning,

Thank you for your August 31, 2011 request for review of the decision to relocate retail services currently located at 1601 Main Street, Venice, California. Please find enclosed the final decision of the Postal Service regarding the requests for review relating to that facility.

I was designated as the decision maker in this matter because the Vice President, Facilities, had already concurred in the original decision. The attachment explains our position in more detail and we believe we have addressed all of the concerns expressed by our customers. As I have explained, I will not set aside the original decision.

Sincerely,

A handwritten signature in black ink, appearing to read "David E. Williams", with a long horizontal flourish extending to the right.

David E. Williams

Enclosure

cc: Tom A. Samra

Final Decision Regarding Relocation of Retail Services in Venice, California

In accordance with the procedures set forth at 39 C.F.R. § 241.4(c)(6), this is the final decision of the Postal Service with respect to the relocation of retail services from the Venice, California Main Post Office at 1601 Main Street to the Venice Carrier Annex at 313 Grand Boulevard. The Postal Service announced its decision to relocate retail services on July 18, 2011 and subsequently received requests for review from several postal customers. I have carefully considered all the concerns expressed by our customers in each of the requests for review and other correspondence along with the complete project file relating to the relocation proposal. While I am sympathetic to some of the concerns raised, for the reasons set forth below, I will not set aside the Postal Service's prior decision.

Postal customers raised concerns about impacts the Postal Service's decision to relocate retail services might have on (1) historic resources and (2) the surrounding environment, specifically traffic and parking impacts within a coastal zone and in the residential neighborhood around the Venice Carrier Annex. Each of these issues is addressed below.

I. Historic Resources

The Venice Main Post Office was constructed in 1939 and is eligible for listing in the National Register of Historic Places. An oil-on-canvas mural entitled "Story of Venice" by artist Edward Biberman is currently on display in the lobby. Several customers expressed concern that the building and/or mural would not be preserved.

Section 106 of National Historic Preservation Act ("NHPA") requires federal agencies to take into account the effects of their proposed undertakings on historic properties, and when such effects are possible, to initiate and complete the Section 106 consultation process. Section 106 review ensures that federal agencies consider historic properties, along with other factors such as cost and agency mission, in the planning process of proposed undertakings. However, the preservation of every historic property is not the goal of Section 106, nor does Section 106 require a business to continue to operate in a historic property even if doing so causes the business to become unprofitable.

The relocation of retail services is not an "undertaking" within the meaning of Section 106. An undertaking is a "project, activity or program" that can result in changes in the character or use of historic properties. The relocation of retail services does not alter the character of the Venice Main Post Office building or the mural. Nor does it change the uses that can be made of the property. There will be no "undertaking" within the meaning of NHPA until the Postal Service adopts a plan for the reuse of the Venice Main Post Office or the transfer of the Post Office building from Postal Service ownership to private ownership. The

Postal Service will initiate the Section 106 consultation process when it develops plans for the reuse or disposal of the property, and the City of Venice will be a consulting party. The Postal Service will include measures to ensure the mural will remain available for public viewing in any plan for reuse or disposal of the Post Office property.

II. Traffic and Parking

The Venice Main Post Office will be relocated 400 feet to the Venice Carrier Annex. The relocation will not result in any negative environmental impacts, nor will it be inconsistent with the policies of the California Coastal Act. The Carrier Annex can accommodate retail counters and Post Office Boxes without expansion of the building. While trips will be 400 feet shorter or longer depending on the direction from which vehicles are traveling, there will be no rerouting of traffic as a result of the relocation. Although several customers expressed concerns about a parking shortage in the area, this situation should not be exacerbated by the relocation of the Venice Main Post Office since the Carrier Annex property includes an on-site parking lot for postal vehicles and will be restriped to accommodate additional parking spaces for our customers.

III. Balancing the Impact on the Community and the Best Interests of the Postal Service

While the Postal Service is not insensitive to the impact of this decision on its customers and the Venice community, the relocation of the Venice Main Post Office is in the best interest of the Postal Service. The Venice Carrier Annex can accommodate the retail counters and Post Office Boxes without expansion of the building. Relocation of the carriers from the Venice Carrier Annex to the Venice Main Post Office was considered, but rejected because the Venice Main Post Office has insufficient parking to accommodate additional operations and insufficient platform space to accommodate tractor/trailer mail delivery. I have also taken into account the comments regarding the physical appearance of the Annex. The Postal Service will realize an annual cost savings of \$135,498 by moving retail services into the Venice Carrier Annex. The annual cost savings takes into consideration the cost of relocation, which is offset by savings from utilities and maintenance labor.

In reaching this decision, I considered all of the public input received but the objections expressed do not outweigh the financial exigencies facing the Postal Service. With current projections for declining mail volume, and the financial condition of the Postal Service, the Postal Service must make any feasible change to reduce costs. As our customers are no doubt aware, the Postal Service is funded by the sales of its services and products. It has an obligation to match its retail and distribution networks to the demand for its services from customers.

Accordingly, I conclude that there is no basis to set aside the decision to relocate the Venice Main Post Office, 1601 Main Street, to the Venice Carrier Annex, 313 Grand Boulevard. This is the final decision of the Postal Service with respect to this matter, and there is no right to further administrative or judicial review of this decision.

A handwritten signature in black ink, appearing to read 'D. Williams', with a long horizontal flourish extending to the right.

David E. Williams
Vice President, Network Operations

Exhibit C

1 JOHN A. HENNING, JR. (State Bar No. 159138)
125 North Sweetzer Avenue
2 Los Angeles, California 90048
Telephone: (323) 655-6171
3 Facsimile: (323) 655-6109

4 Attorney for Petitioners VENICE STAKEHOLDERS
5 ASSOCIATION and MARK RYAVEC

6
7
8 BEFORE THE
9 POSTAL REGULATORY COMMISSION
10

11 VENICE STAKEHOLDERS
12 ASSOCIATION, an unincorporated
nonprofit association; MARK RYAVEC,
13 an individual,

14 Petitioners,

15 v.

16 UNITED STATES POSTAL SERVICE,
a government entity,

17 Respondent.
18
19
20
21
22
23
24
25
26
27
28

Docket No. _____

**PETITION FOR REVIEW OF
DECISION TO CLOSE VENICE
MAIN POST OFFICE [39 C.F.R.
3001.111];**

AND

**APPLICATION FOR SUSPENSION
OF CLOSURE DECISION
PENDING OUTCOME OF APPEAL
[39 C.F.R. 3001.114]**

1 **PETITION FOR REVIEW OF CLOSURE DECISION**

2
3 1. Petitioners Venice Stakeholders Association and Mark Ryavec
4 (“Petitioners”) hereby petition the Postal Regulatory Commission, pursuant to 39 C.F.R. §
5 3001.111, for review of the September 23, 2011, decision by the United States Postal
6 Service (the “Service”) to close the historic Venice, California Main Post Office
7 (hereinafter “VMPO”) at 1601 Main Street (hereinafter the “Closure Decision”), a copy of
8 which is attached hereto.

9
10 2. The petition is made on the following grounds:

11
12 a. The Closure Decision improperly describes the closure as a
13 “relocation” of a customer service facility to another existing building, namely, the Venice
14 Carrier Annex at 313 Grand Boulevard. The Closure Decision accordingly purports to
15 have been made under 39 C.F.R. § 241.4, a regulation concerning relocations that provides
16 only for a review by the Vice President, Facilities of the Service. Specifically, the Closure
17 Decision states that “This is the final decision of the Postal Service with respect to this
18 matter, and there is no right to further administrative or judicial review of this decision.”

19
20 b. In fact, the Closure Decision would result in the elimination of
21 a large retail post office with five customer windows and the establishment in its place of a
22 much smaller retail operation with no more than two customer windows, ancillary to the
23 nearby Venice Carrier Annex. This dramatic decrease in the size of the VMPO
24 simultaneous with its purported “relocation” means that in fact, the action is the functional
25 equivalent of a closure – or at least a partial closure – of the VMPO. Thus, the decision
26 should be, and is, subject to all procedures and considerations associated with a closure
27 under 39 U.S.C. § 404(b) and 39 C.F.R. § 241.3, including an appeal to this Commission.

1 c. The Postal Service has failed to comply with 39 U.S.C. §
2 404(b)(1), which requires, prior to closing the VMPO, the provision of at least 60 days'
3 notice to persons served by such post office;

4
5 d. The Postal Service has failed to comply with 39 U.S.C. §
6 404(b)(2), which requires the Postal Service to consider, before closing the VMPO,
7 numerous factors including the effect on the community, the effect on employees, and the
8 economic savings to the Postal Service;

9
10 e. The Postal Service has failed to comply with 39 C.F.R. §
11 241.3(a)(5), which requires that an initial feasibility study be prepared before any decision
12 to discontinue the VMPO.

13
14 f. The Postal Service has failed to comply with 39 C.F.R. §
15 241.3(c)(1)(i), which requires that the District Manager, in considering whether to
16 recommending closure of the VMPO, to follow all standards and procedures set forth in 39
17 C.F.R. § 241.3(c) and (d).

18
19 g. The Postal Service has failed to comply with 39 C.F.R. §
20 241.3(c)(4), which requires the District Manager to prepare a written proposal to close the
21 VMPO, which would describe, analyze and justify in detail the proposed change and its
22 effect on available services, the community, employees, economic savings to the Service,
23 and other factors; and which would notify the public of where to inspect materials on
24 which the proposal was based, and its right of appeal from any final determination; and
25 which requires the District Manager to preserve for the record all documentation used to
26 assess the proposed change.

27
28

1 h. The Postal Service has failed to comply with 39 C.F.R. §
2 241.3(d), which requires that the written proposal and a signed invitation for comments be
3 posted prominently at the VMPO and elsewhere, that a community meeting be held on the
4 proposal, and that a complete copy of the record be available for public inspection during
5 normal office hours;

6
7 i. The Postal Service has failed to comply with 39 C.F.R. §
8 241.3(e), which requires consideration of all public comments and a final local
9 recommendation by the District Manager concerning the proposal to close the VMPO;

10
11 j. The Postal Service has failed to comply with 39 C.F.R. §
12 241.3(f), which requires the preparation of a final written decision by the responsible
13 Headquarters Vice President, including a specific notice advising the public of its right to
14 appeal the determination to this Commission within 30 days after the posting of the
15 determination;

16
17 k. The Postal Service failed to comply with 39 U.S.C. §
18 404(b)(3), which requires the determination to close the VMPO to include written findings
19 with respect to the considerations required to be made under with 39 U.S.C. § 404(b)(2),
20 and by failing to make the determination and findings available to persons served by the
21 VMPO; and

22
23 l. The Postal Service has failed to comply with 39 U.S.C. §
24 404(b)(4), which requires it to refrain from taking any action to close the VMPO until 60
25 days after its written determination is made.

26
27
28

1 3. Petitioner Venice Stakeholders Association (“VSA”) is an
2 unincorporated nonprofit association organized under section 501(c)3 of the Internal
3 Revenue Code, which includes members who are served by the VMPO. As such, VSA is a
4 “Person” under 39 C.F.R. § 3001.5 that is served by the VMPO, and thereby entitled to file
5 this Petition.

6
7 4. Petitioner Mark Ryavec is a resident of Venice who is served by the
8 VMPO, and is thereby entitled to file this Petition.

9
10 5. Respondent United States Postal Service is a government entity which
11 operates the VMPO and is responsible for the Closure Decision.

12
13 **APPLICATION FOR SUSPENSION OF CLOSURE DECISION**

14
15 6. Petitioners further apply pursuant to 39 C.F.R. § 3001.114 for an
16 order suspending the effectiveness of the Closure Decision pending the outcome of this
17 appeal. Such application is made based upon facts that are not subject to dispute, namely,
18 as follows:

19
20 a. The closure would result in an immediate and dramatic
21 reduction in the services now provided at the VMPO, including, but not limited to, a
22 reduction of customer service windows by 60 percent, i.e., from five windows to no more
23 than two;

24
25 b. The Postal Service is, as a result of the Closure Decision,
26 already attempting to sell the historic structure that has housed the VMPO since 1939; and
27
28

1 c. If said structure is sold while this appeal is pending, the Postal
2 Service would be incapable of restoring the services that are the subject of the appeal.

3
4 **PRAYER FOR RELIEF**

5
6 WHEREFORE, Petitioners request that the Commission:

7
8 a. Make an immediate order suspending the effectiveness of the
9 Closure Decision until the final disposition of this appeal;

10
11 b. Reverse the Closure Decision and return the matter to the
12 Postal Service for further consideration; and

13
14 c. Provide such other and further relief as the Commission deems
15 just and proper.

16
17 DATED: October 13, 2011

18
19
20 

21
22 _____
23 JOHN A. HENNING, JR.
24 Attorney for Petitioners
25 VENICE STAKEHOLDERS ASSOCIATION
26 and MARK RYAVEC
27
28

Exhibit D

Petitioner Greta Cobar, an individual residing in Venice, California and served by the Venice, California Main Post Office (the “VMPO”) hereby petitions the Postal Regulatory Commission, pursuant to 39 C.F.R. § 3001.111, for review of the September 23, 2011, decision by the United States Postal Service (“USPS”) to close the historic structure presently housing the VMPO at 1601 Main Street (hereinafter the “Closure Decision”), made by way of the Final Decision Regarding Relocation of Retail Services in Venice, California dated September 23, 2011, and signed by David E. Williams, Vice President of Network Operations for the USPS.

The petition is made on the ground that the Closure Decision improperly describes the closure as a “relocation” of a customer service facility to another existing building, namely, the Venice Carrier Annex at 313 Grand Boulevard, when in fact it would result in the elimination of a large retail post office with five customer windows and the establishment in its place of a much smaller retail operation with no more than two customer windows, ancillary to the Venice Carrier Annex. This dramatic decrease in the size of the VMPO simultaneous with its purported “relocation” means that in fact, the action is the functional equivalent of a closure – or at least a partial closure – of the VMPO. Thus, the decision should be, and is, subject to all procedures and considerations associated with a closure under 39 U.S.C. § 404(b) and 39 C.F.R. § 241.3, including an appeal to this Commission. Petitioner therefore requests that the Commission reverse the Closure Decision and return the matter to the Postal Service for further consideration. In addition, based upon the foregoing facts Petitioner applies pursuant to 39 C.F.R. § 3001.114 for an order suspending the effectiveness of the Closure Decision pending the outcome of this appeal.

Other issues with closing the VMPO involve preservation of the 1939 Works Projects Administration building and the 1942 Edward Biberman mural. Two other Biberman murals that were removed from the downtown post office and court house were never to be found again when Biberman himself searched for them in the mid 1980s. In addition, the mural has to be available for public viewing, which would be difficult to ensure once the building is sold.

In addition, the residential area surrounding the annex, the proposed new location of the post office, cannot accommodate the increased traffic that moving the post office would create. Currently all parking spots at the annex are occupied either with post office vehicles or employee parking. There are no spots available for post office customers, and no plans to create such spots. Moving all customer traffic and parking to the strictly residential area would affect the residents’ quality of life and would have a negative environmental impact. No environmental or traffic studies have been conducted to evaluate the possible effects on the residents.

According to several postal employees, the annex is currently extremely crowded with the sorting operations, and there is no space available to accommodate the postal service operations. Although \$400,000 has been allocated for remodeling of the annex, such a consolidation will result in crowded conditions that will not meet the standards of the community.

The community served by the VMPO is united and outspoken against the closure of the post office, which is a community landmark. The community supports moving the Venice sorting operations from the annex to the VMPO and sending the Marina del Rey and Playa del Rey sorting to their neighborhoods. The annex could then be sold for at least \$16 million, which

is more than triple the amount the VMPO is currently on the market for. Because of the strong demands of the community for the preservation of the VMPO historic building as well as the public's access to the Biberman mural, the sale of the annex would be a much easier sale than that of the VMPO building.

I look forward to working with postal office representatives to find a solution that accommodates the Venice community and allows us to continue supporting the USPS.

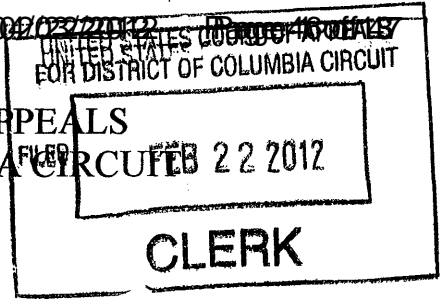
Sincerely,

Greta Cobar

October 21, 2011

Exhibit E

FEB 22 2012 UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT FEB 22 2012



RECEIVED

VENICE STAKEHOLDERS)
ASSOCIATION, *et al.*,)
)
Petitioners,)
)
v.)
)
POSTAL REGULATORY COMMISSION,)
)
Respondent.)

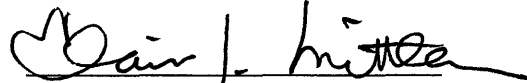
No. 12-1110

PETITION FOR REVIEW

Pursuant to 39 U.S.C. § 3663 and Fed.R.App.P. 15, Venice Stakeholders Association, Mark Ryavec, Greta Cobar, Jonathan Kaplan, Sue Kaplan, Jethro Pauker, James Smith, and Free Venice Beachhead newspaper hereby petition this Court for review of Order No. 1166 of the Postal Regulatory Commission (Commission) relating to the appeal of the final decision of the United States Postal Service concerning the Venice Post Office in Venice, California. The Order is attached hereto.

Order No. 1166 was issued by the Commission on January 24, 2012, and posted on the Commission's website on January 24, 2012. This Court has jurisdiction to review an order of the Commission and venue is proper in this Circuit. 39 U.S.C. § 3663. This Petition for Review is timely under 39 U.S.C. § 3663.

Respectfully submitted,



Elaine J. Mittleman, Esq.

Attorney for Petitioners

2040 Arch Drive

Falls Church, VA 22043

(703) 734-0482

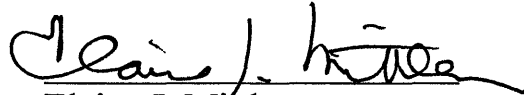
CERTIFICATE OF SERVICE

I hereby certify that on February 22, 2012, I caused a copy of the foregoing Petition for Review to be served by first-class mail, postage prepaid, on the following:

Stephen Leo Sharfman, Esq.
Postal Regulatory Commission
901 New York Avenue, N.W.
Suite 200
Washington, D.C. 20268-0001

Michael J. Elston, Esq.
Appellate Counsel
United States Postal Service
475 L'Enfant Plaza, S.W.
Washington, D.C. 20260-1137

Respectfully submitted,



Elaine J. Mittleman