

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

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

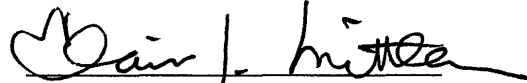
No. 12-1110

**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,



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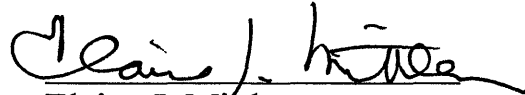
### CERTIFICATE OF SERVICE

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:

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Respectfully submitted,



Elaine J. Mittleman

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).<sup>1</sup> In Order No. 918, the Commission gave notice of the appeal, designated a Public

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<sup>1</sup> 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, 11<sup>th</sup> 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.<sup>2</sup> 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).<sup>3</sup> 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.<sup>4</sup>

Petitioners filed their initial brief and opposition to the motion to dismiss on December 9, 2011.<sup>5</sup> They also filed a reply brief on January 10, 2012.<sup>6</sup> 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.

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

<sup>3</sup> 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).

<sup>4</sup> 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.

<sup>5</sup> 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).

<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> 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).<sup>9</sup> 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*)

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<sup>7</sup> 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.

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

<sup>9</sup> 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.<sup>10</sup>

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

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<sup>10</sup> 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.)<sup>11</sup> 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.<sup>12</sup> 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

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<sup>11</sup> 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\\_stories/2.txt](http://www.argonautnewspaper.com/articles/2011/10/06/news_-_features/top_stories/2.txt).

<sup>12</sup> 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.

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.

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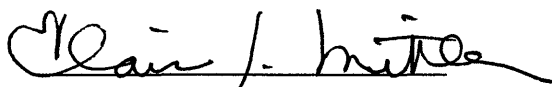
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**PETITIONERS' CORPORATE DISCLOSURE STATEMENT**

Pursuant to Fed.R.App.P. 26.1 and the Circuit Rules of this Court, Venice Stakeholders Association hereby provides this Corporate Disclosure Statement.

Venice Stakeholders Association is an unincorporated nonprofit association organized under § 501(c)(3) of the Internal Revenue Code. The Venice Stakeholders Association is dedicated to civic improvement. The Association supports slow growth, protection of the limits of the Venice Local Coastal Specific Plan, neighborhood safety, improved traffic circulation, increased parking for residents, neighborhood beautification projects, historic preservation, habitat restoration and protection of coastal waters.

Respectfully submitted,



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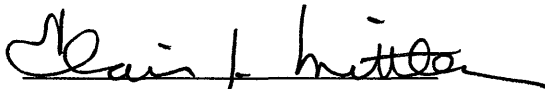
**CERTIFICATE OF SERVICE**

I hereby certify that on February 22, 2012, I caused a copy of the foregoing  
Petitioners' Corporate Disclosure Statement to be served by first-class mail,  
postage prepaid, on the following:

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