

Before the
Postal Regulatory Commission
Washington, D.C. 20268-0001

1
2 Lance P. McDermott, Complainant,) Docket No. C2010-2
3 vs.) Response to the Agency Motion to Dismiss
4
5 John P. Potter, Postmaster General, United)
States Postal Service, Et Al.)

6 1. I did state several claims pursuant to 39 U.S.C. Section 3662. 3662(a) – “Any person who
7 believes the Postal Service is not operating in conformance with the requirements of sections
8 101(d), 401(2), 403(c), 404a, or 601 or this chapter (or regulations promulgated under any of
9 those provisions) may lodge a complaint...” I am “any person” and I believe that the U.S. Postal
10 Service is not conforming to the Laws and Federal Regulations passed by Congress promulgated
11 through the provisions in Postal Service Regulations.

12 2. I have followed the procedures implemented by the Postal Regulatory Commission to file a
13 Complaint for the Postal Service’s failure to follow the Due Process Requirements of the Law
14 and Federal Regulations. I have not lost any of my Rights to make a written “paper” complaint
15 nor used the U.S. Postal Service’s Public Mail System to file it with the Commission.

16 3. I am not “premature”. The Postal Service is premature in its decision to sell non-excess
17 Public Trust facilities. The Agency is premature in selling facilities because of its failure to
18 follow the Lawful Due Process Procedures required to Sell or Dispose of the Public Trust
19 Facilities.

20 In PRC Docket Number A2009-1, Hacker Valley, the Commission found - "... The
21 Commission finds that the Hacker Valley post office has been closed, at least temporarily, and
22 that proper procedures to close that facility have not yet been completed.” The Postal Service has
23 not followed the proper procedures in consolidating, closing, disposal, sale or leasing of Public
24 Trust facilities.

25 4. Pursuant to 39 CFR 3001.9(c) the Complaint was accepted for filing by the PRC and

1 pursuant to 39 CFR 3001.12(a) – “... shall be deemed served on all participants when it’s
2 accepted by the Secretary and posted on the Commission’s Web site...” It has been properly filed
3 and served.

4 5. I did meet with the USPS Seattle Processing and Distribution Manager Don Jacobus about
5 the closure and sale of the SeaTac Air Mail Center (AMC) Facility. I asked him for a copy of the
6 Area Mail Processing Plan that showed the need to close the AMC and a copy of the Decision to
7 transfer the work done by Postal Employees loading the airplanes to a contractor. Mr. Jacobus
8 told me to see his lawyer (sue me) to get copies. I asked for a copy of the Western Area Retail
9 Optimization Plan that the unsigned Decision to Sell, Consolidate, and Dispose of the Queen
10 Ann Post Office (exhibits 1, 2, and 3) stated was created and was told that there is none. This
11 meets the burden of proof required by the “Vaughn Index” (Vaughn v. Rosen, 484 F.2d 820
12 (D.C. Cir. 1973) cited in a Decision for Michael Reid v. USPS, Case No. 05-cv-294-DRH,
13 defended by Anthony Alverno, Chief Counsel for the Customer Protection and Privacy at Postal
14 Service Headquarters, 10 May 2005.

15 6. 54198 Federal Register Volume 71, Number 178, Doc E-6-15111, 14 September 2006, 39
16 CFR Parts 111 and 958, Final Rule, - “This final rule transfers responsibility for final agency
17 decisions in connection with Post Office box termination, caller service termination, and denial
18 of service appeals from the Judicial Officer Department to the Vice President and Consumer
19 Advocate... the postmaster must issue a written letter explaining his or her decision and include a
20 copy of the relevant regulations relating to the customer’s appeal rights... Consumer Advocate
21 will be given decision-making power to review and decide... The Consumer Advocate is a neutral
22 and impartial arbiter of consumer claims and is already the final arbiter for appeals of domestic
23 and international indemnity claims for loss or damage Mailing Standards for the USPS, Domestic
24 Mail Manual 609.6 and International Mail Manual 931.3 and for appeals of local handling of
25 complaints and inquires about postal products, services or employees (DMM 608.6.1)....

1 Authority 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, ...”

2 In the USPS MTD PRC Docket Number CP2009-19, 8 March 2010, the Agency’s Chief
3 Counsel, Anthony F. Alverno, argued that 5 U.S.C. Section 552(b)(3) and (4) of the
4 Administrative Procedures Act applies to the Postal Service as it also applies to the
5 administrative procedures of the PRC. However, under the Act’s Alternate Dispute Resolution
6 Rules adopted by the Commission and the USPS requires the use of non-attorney(s) in the
7 Administrative Process to save money (the Government and Public). This is also to prevent any
8 masking, pretext or meddling of the Administrative Process for any future litigation and so that
9 any Civil or Criminal Proceedings are not tainted. Considering that this Administrative
10 Complaint is about the loss of billions of dollars of Public Trust Money and Assets several of the
11 Issues could be or should be considered for Civil or Criminal Proceedings.

12 Considering that Anthony Alverno representing USPS was a Panelists at the Express Delivery
13 Services Roundtable hosted by Sue Presti of the Air Courier Conference of America – “...Tony
14 Alverno began his presentation on U.S. Postal Service perspectives on trade **liberalization** by
15 pointing out some of the differences between the USPS and private providers... He also
16 mentioned that synergistic relationships have grown up between the USPS and private EDS firms
17 and gave as examples: the placement of FedEx drop boxes in the USPS lobbies... the use of the
18 USPS Parcel Select program by integrators and logistics companies to complement their products
19 offerings.”

20 Tony was also a Project Team Leader for the Universal Postal Union (UPU) that hosted a
21 Seminar, September 2003, entitled; “The Classification Debate: Defining Postal, Courier, and
22 Express Delivery Services for the World Trade Organization (WTO) Negotiations,” with Julian
23 Oliver the Executive Director of the International Express Carriers Conference.

24 Tony wrote - “The WTO Doha Development Agenda: Defining the Scope of Postal Service
25 **Liberalization**”.

1 Rutgers University, FedEx, RR Donnelley, IBM, Pitney Bowes, Association for Postal
2 Commerce and Siemens sponsored (paid money?) a book authored by Anthony Alverno USPS
3 and Ralph Carter of the European Express Association - "Competitive **Transformation** of the
4 Postal Delivery Sector." - "This book arises out of the Eleventh Conference on Postal Delivery
5 Economics held in Toledo, Spain, June 4-7, 2003... Issues addressed included international postal
6 policy, strategies for the postal sector, the universal service obligation, regulation, competition,
7 entry, cost and productivity, interaction of law and economics, and future technologies."

8 The Department of State hosted a meeting of the UPU, 6 November 2001, attended by USPS
9 Anthony Alverno and FedEx David Spence. UPU has a Consultative Committee under the
10 chairmanship of Charles Prescott of the Direct Marketing Association.

11 Tony organized and with FedEx Attorney Ralph Carslake was a Speaker at the 11th Conference
12 on Postal and Delivery Economics (\$1,035 registration fee payable to Rutgers University), June
13 2003, sponsored by FedEx, RR Donnelly, IBM, Pitney Bowes, Association for Postal Commerce
14 and other contractors and competitors of the Postal Service. That being the case it is
15 administratively and procedurally inappropriate for the USPS Chief Counsel to answer an
16 Administrative Complaint. The Consumer Affairs Office "USPS Headquarters" Official
17 answered the Informal Complaint (exhibit 12). The Formal Administrative Complaint is also
18 required to be answered by the Consumer Advocate.

19 7. The Commission is not limited to just the sections of 39 CFR and 39 USC under Section
20 3662. Section 3662 states - "... or regulations promulgated under any of those provisions."
21 Pursuant to Section 3662(d) - "In addition, in cases of deliberate noncompliance buy the Postal
22 Service with the requirements of this title, the Postal Regulatory Commission may order, based
23 on the nature, circumstances, extent, and seriousness of the noncompliance, a fine..."

24 PRC Docket A2010-1, - "...The Commission finds that the Cranberry post office has been
25 closed temporarily, but the proper procedures for doing so have not been completed."

1 In Hacker Valley the Commission found - "... This history strongly suggests that the Postal
2 Service is using its suspension authority to avoid the explicit Congressional instructions to hear
3 and consider the concerns of patrons before closing post offices.... On the basis of the narrow
4 record developed in this appeal, the Commission cannot find that the Postal Service is
5 intentionally circumventing the policies of 39 U.S.C. 404(d). However, the Commission
6 recognizes that such a practice may be ongoing, and it will initiate action to develop a more
7 complete record on the subject so that it can fulfill its responsibility under the Postal
8 Accountability and Enhancement Act, section 701, to submit reports to the President and
9 Congress recommending legislation necessary to improve the effectiveness of the postal laws of
10 the United States." The Postal Service has deliberately failed to follow the Lawful Due Process
11 Procedures for closing, selling, consolidating, deposing, excising or leasing Public Trust
12 facilities.

13 8. The "internal communication" (exhibit 1) states – "... please date stamp and post this in the
14 lobby for a period of 15 calendar days." This Public Communication states that that there is a -
15 "... program to generate revenue from under-utilized or excess facilities." However, facilities
16 like the Queen Ann Post Office and the SeaTac AMC are/were not under-utilized or excess.

17 The Agency's response to the Commission's questions for Hacker Valley, 26 October 2009, -
18 "...Section 221 of Handbook PO-101 lists nine tasks to be completed in preparing for the
19 investigation. These tasks include obtaining a map showing the locations of other nearby offices,
20 obtaining a list of customers' addresses, consulting city officials for information on growth
21 trends in the community, and more. Of the entire list of tasks provided in section 221, which
22 tasks have been completed? RESPONSE: No such tasks have been completed, although
23 counsel is assured that a study has commenced." In Hacker Valley the Commission found - "...
24 The law grants the Postal Service the specific authority to determine the need for post offices,
25 and so long as it follows the process enumerated in 39 U.S.C. 404(d), to close facilities as it

1 deems necessary.” However, none of the Public Trust Properties in the Complaint have had a
2 written study or decision to determine that they are under-utilized or excess to the needs of the
3 Postal Service or the Public who paid for them.

4 9. Section 3001.110 – “... Pursuant to section 404(b) of the Act any decision to close or
5 consolidate a post office must be preceded by 60 days notice to persons served by such post
6 office, the opportunity for such persons to present their views, and a written determination based
7 upon consideration of each of the factors listed in section 404(b)(2) of the Act. This
8 determination to close or consolidate a post office may be appealed to the Postal Regulatory
9 Commission ...”

10 USPS Postal Operations Handbook PO-101.121 – “Under Title 39, United States Code,
11 Section 404(b), any decision ... must be based on certain criteria...,” (Complaint page 1).

12 PRC Docket Number N2006-1 page 91, - “... the public’s comments and concerns must be
13 seriously considered at all levels of management early in the process.’ Id. OCA is correct that
14 Handbook PO-408 must be reviewed and updated in order for the AMP process to function
15 effectively.” Page 92, - “... The Service argues that this should also be regarded by the
16 Commission as evidence that the Postal Service has ‘an abiding commitment to keep the public
17 informed of potential operational changes that could lead to changes in service.’ Id. at 11-12.”
18 Page 93, - “... The Handbook’s worksheet 3, entitled Communication Document, requires notice
19 at the point where the AMP Feasibility Study has matured to the stage of a being considered a
20 proposal.” The Postal Service by law must let the Public know 60 days in advance before the
21 making decision or proposal and use their input before making any decision not after!

22 10. PO-101.131, - “The Vice President, Delivery and Retail (or designee), makes the final
23 determinations ...” (Complaint page 3). In the MTD on page 4 the Agency states that the
24 Western Area Facilities Service Office (FSO) made the decision to dispose of the facility when
25 the Decision must be made by the USPS VP of Delivery and Retail for a Headquarters Decision.

1 PRC Docket A2010-1, - "... As recently explained in Docket No. A2009-1, suspension of
2 operations in a Post Office must be followed within 90 days by a District decision whether to
3 study an office for discontinuance, or whether operations may be restored... The Postal Service
4 notes that it was not asked informally what the procedural stance of this matter is, as had been the
5 historical practice. (In such instance, were the Commission informed that the matter involves a
6 suspension, not discontinuance of an office, the Commission would respond by sending out its
7 standard "premature appeal" form letter.) ... " Local decisions must be made by the District
8 Managers not the unknowing and out of the loop Western Area FSO.

9 11. PRC Docket No. N2009-1 Page 8 – "...The Postal Service notes that the 'initial' focus of
10 the Initiative will be on stations and branches the report to EAS-24 and above postmasters. Id. at
11 5. The Postal Service continues that 'experience with this initial focus will inform any decision
12 whether to continue or expand the Initiative to include a broader pool of stations and branches.'
13 Page 17, - "... Witness VanGorder explains that the Postal Service has a longstanding process
14 that is a critical component of the Initiative in which **Districts** examine stations and branches for
15 consolidation, and submits proposals to Headquarters.... She asserts that 'the objective of the
16 Initiative is to concentrate field management's application of a venerable analytical process for
17 studying components of retail network to determine if it can more efficiently serve the needs of
18 the mailing public,' ..." MTD page 3 – "...not associated with the National SBOC (Station and
19 Branch Office Consolidation) program..." Therefore the decision to close, consolidate or sell the
20 Queen Ann Post Office must start with the District and not Western Area.

21
22 PRC Docket #PI 2010-1, 28 February 2010, - "At the time of our land purchase, Crescent
23 Lake had its own Post Office and ZIP code... Little did I know that things were happening behind
24 our backs which did not follow correct protocols? None of us knew of the posting in the
25 Crescent, Oregon Post Office a year ago regarding the closure of our Post Office. Why would

1 this be posted in an area in which we would not see it and therefore have no opportunity to
2 protest it? ... This reminds be of actions of children, who omit telling all, feeling they have done
3 no wrong, have not told a lie, and they have simply omitted certain facts.” Mary V. Doane, PO
4 Box 1145, **Crescent Lake**, OR 97733-1145.

5 Conclusion

6 I have made a very clear complaint about the closure and sale of Public Trust facilities and the
7 leasing of more expensive privately owned facilities. This has resulted in the loss of more than
8 25,000 facilities funded and built by the Federal Government held in Public Trust by the U.S.
9 Postal Service. By law if the Postal Service sold any of these Public Trust Facilities it must put
10 the money into a special fund to maintain other Federal Facilities or to build new ones.

11 However, it appears that the Postal Service has not conformed to this law either. I want the U.S.
12 Postal Service to account for the \$100+ billion in lost Public Assets before its final phase of the
13 Transformation/Privatization/Liberalization Plan leaves nothing for the Public’s or Employees’
14 investments. In the case of the AMCs, the facilities that were closed, the work was also
15 improperly contracted out as part of the Postal Service’s hidden agenda to privatize at what ever
16 the cost in Public Money or Postal Employees and hand over Public Assets to private individuals.
17 The main problem in getting any accounting is that U.S. Postal Service Officials who are in bed
18 with corrupt contractors, private delivery companies and industry associations are suffering from
19 “Brown Eye Syndrome” because they are so full of “it” that their eyes are floating and they
20 cannot see the truth.

21 Dated this 26th day of May 2010,

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23
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