

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

In the Matter of:
University Station
Eugene, Oregon 97403
(Steven Shapiro, Petitioner)

Docket No. A2011-4

**COMMENTS OF
AMERICAN POSTAL WORKERS UNION, AFL-CIO
EUGENE AREA LOCAL NO. 679
(January 21, 2011)**

The American Postal Workers Union, AFL-CIO, Eugene Areal Local No. 679 (“Union” or “Local 679”) submits these comments in response to the Comments of the United States Postal Service filed January 18, 2011 (“USPS Comments”).

Commission Has Jurisdiction Over this Appeal

Despite the Postal Regulatory Commission’s (“PRC” or “Commission”) clear and unwavering holding that its jurisdiction under 404(d) is not limited to review of the closing and consolidations of post offices, in the technical sense,¹ the Postal Service argues that the Commission must dismiss this appeal because University Station is not a post office. This is not a new argument. For over thirty years the Postal Service has argued for a narrow reading of the term post office and therefore, limited review of postal retail facility closings by the Commission. The Commission in turn, has consistently and decisively rejected this argument each time it has been raised. For example, in its first decision on this subject, *In re Gresham, SC*, Docket No. A78-1, the Commission recognized that

¹ See *In re Gresham, SC*, Docket No. A78-1, Order No. 208; *In re Knob Fork, WV*, Docket No. A83-30, PRC Op. at 7; Docket No. A94-8, PRC Op. at 9; *In re Oceana Station Virginia Beach*, Docket No. A82-10, Order No. 436; *In re Observatory Finance Station* Docket No. A2006-1, Order Denying Postal Service Motion to Dismiss and Remanding for Further Consideration at 1-3, September 29, 2006; PRC Advisory Opinion N2009-1, March 10, 2010; Docket No. A2010-3, Order No. 477 at 5-6, June 22, 2010.

“post office” in its “ordinary sense” would mean “a fixed retail facility serving the public and acting as the point of origin for delivery routes.” Order No. 208 at 6-7. In Docket No. A94-8, the Commission again rejected the Postal Service’s narrow reading of “post offices” under Section 404(b) and stated that the “more reasonable reading of section 404(b) and Congressional intent is that 404(b) applies whenever there is a proposed closure or consolidation of a community’s retail postal facility.” PRC Op. A94-8 at 9. Postal Service mistaken arguments aside, the Commission has continuously held to this ruling, including most recently in Docket No. A2010-3:

The Commission maintains its position that section 404(d) is applicable to the discontinuance of post offices, branches and stations. The Commission believes that section 404(d) was enacted to give persons served by postal retail facilities being considered for closure an opportunity to comment on the closing and to appeal the decision. The general public is largely unaware of the technical differences between a station, branch, community post office or main post office. The discontinuance of a Postal Service operated retail facility has similar effects on patrons regardless of how the Postal Service might classify the facility.

A2010-3, PRC Order No. 477 Dismissing Appeal at 6 (June 22, 2010) citations omitted.

It is clear that this issue has been consistently resolved by the Commission for decades. However, it remains unclear how the Postal Service can continuously ignore Commission holdings and flaunt its regulatory authority. For example, in its current comments in this Docket, the Postal Service extensively references its Comments Regarding Jurisdiction under 404(d) (current) filed April 19, 2010 in Docket A2010-3 (“Jurisdiction Comments”). However, as noted above, in A2010-3 the Commission considered and rightly rejected the Postal Service arguments regarding Commission jurisdiction as unpersuasive.

The Postal Service claims that the Commission’s interpretation of Section 404(d) contradicts legislative and judicial positions on this issue. This claim is unsupported. The Commission has defined “post office” in its ordinary sense for decades and the legislature has done nothing to overrule this definition. In fact, in 2006 Congress re-enacted Section 404(b) without revision other than to change its designation from subsection (b) to subsection (d). “Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when

it re-enacts a statute without change.” Lorillard v. Pons 434 U.S. 575, 580-581 (1978). Thus, the Commission’s interpretation stands.

Furthermore, this interpretation has not been questioned by any relevant judicial decision. The cases cited by the Postal Service in its Jurisdiction Comments predominantly involve the transfer of mail processing operations without impacting retail services and therefore, are irrelevant to the question of the Commission’s jurisdiction in this case and should be disregarded once again by the Commission.

The Commission’s repeated and consistent holding on this issue, including its A2010-3 ruling, is controlling. In accordance with this holding, the Commission must accept jurisdiction over this appeal, regardless of the Postal Service’s designation of the facility as a station.

Closing is Not a Mere Realignment of Retail Facilities

The Postal Service also argues that Section 404(d) protections do not apply because there has been no closing or consolidation under the law given that multiple postal facilities are within 1.7 miles from the University Station. Once again the Postal Service is mistaken.

The University Station caters to a unique community, separate and apart from the community surrounding it. Unlike other postal retailers in the city, University Station’s primary constituents are University of Oregon students, faculty and staff. Having to travel an additional 1.7 miles to the next nearest postal retail facility is no easy feat for these consumers who are generally required on campus most of the day and for many without ready access to private transportation.² Thus, simple statements of distance do not adequately take into account the actual increased hardship this closing would impose on the postal consumers in the University community. For example, walking directions provided by Google Maps and attached to these Comments, show that to walk to the nearest facilities recommended by the Postal Service³ would take approximately 30 minutes, each way. Attachment A. Likewise, taking public transportation to these

² See Letter to Postal Regulatory Commission from Theodora Ko Thompson, filed January 13, 2011.

³ The facilities were obtained from Attachment 2 of the Postal Service Notice filed December 7, 2010. Excluded from the search were the listed CPUs.

facilities would also take around 30 minutes each way. Attachment B. An hour of travel to get to and from a postal facility is an extreme impediment to accessing postal services and will likely make it impossible for many in the University community to do so. Therefore, this is more than a realignment of retail facilities; the Postal Service is closing University Station by removing ready access to postal services in the university community. Accordingly, Section 404(d) procedures apply.

The Postal Service Must Provide its Administrative Record.

Despite the clear requirement under the PAEA and Commission precedent, the Postal Service has failed to provide documentation to substantiate its decision to close University Station. It claims that no such record exists. It strains credulity to believe the Postal Service has no greater detailed record of this closing decision than the limited information it has provided in this docket.⁴ Moreover, if this were in fact true, it is highly troubling that the Postal Service, as a public service provider would undertake to remove access to fundamental postal services without a thorough, documented evaluation. In fact, the Commission alluded to as much in its N2009-1 Advisory Opinion on the Postal Service Stations and Branches Optimization and Consolidation Initiative's compliance with Title 39 wherein it concluded that the Postal Service should apply Section 404(d) requirements, which include the formation of an administrative record, to stations and branches. N2009-1 PRC Advisory Opinion at 64-65.

In order for the Section 404(d) appeal to be meaningful, the Postal Service must provide the entire administrative record for review. If the Postal Service persists in its denial of a complete record, the Commission may on that basis alone find the closing of University Station violates Section 404(d)(5) because it is arbitrary and capricious, not in accordance with the procedures required by law and unsupported by substantial record evidence.

Respectfully submitted,

⁴ See discussion pages 63-64 of PRC Advisory Opinion in N2009-1, March 30, 2010.

Jim Kubli
President, Eugene Area Local No. 679

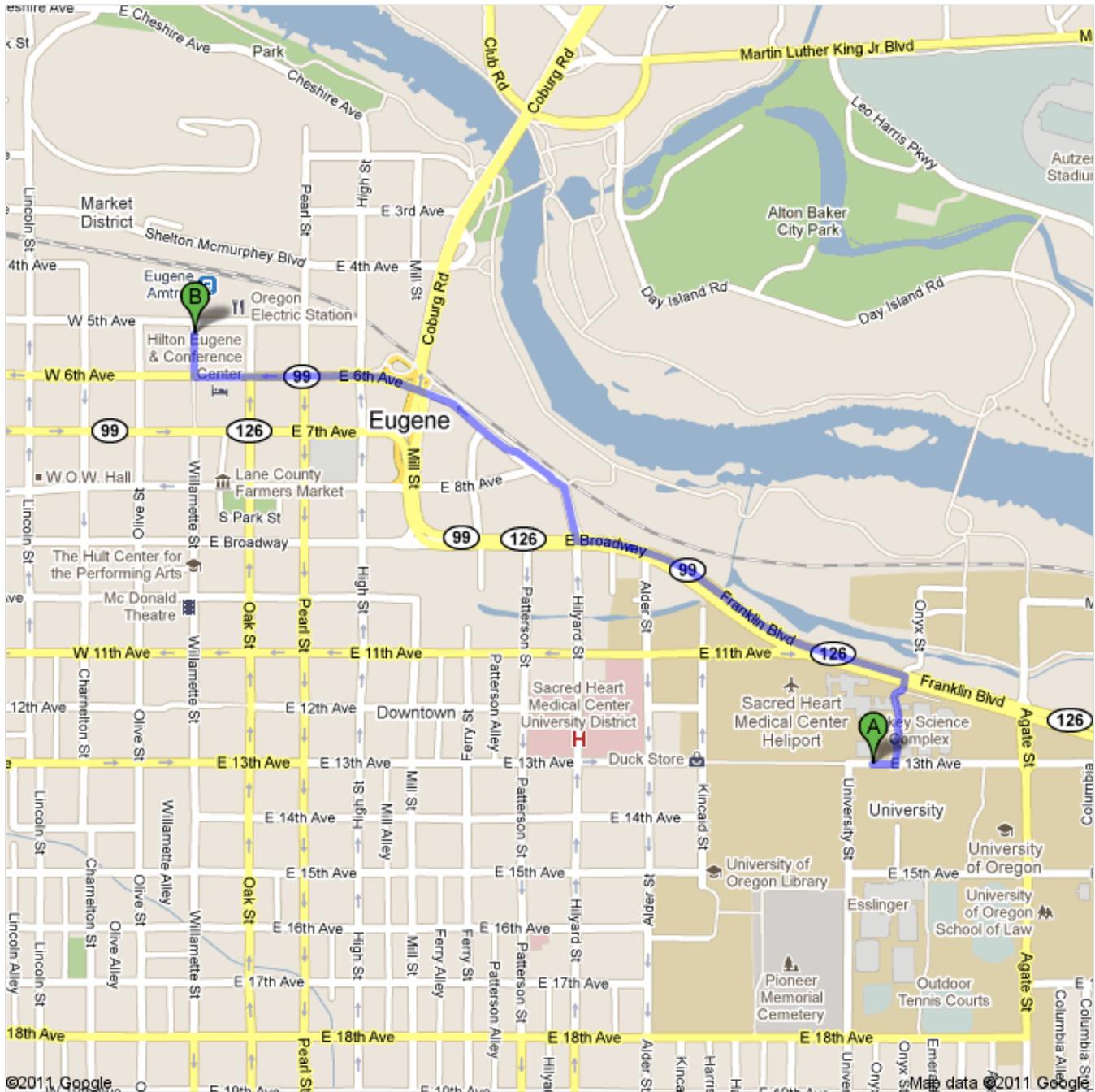
ATTACHMENT

A



Directions to 520 Willamette St, Eugene, OR 97401, USA
1.4 mi – about 27 mins

Walking directions are in beta.
Use caution – This route may be missing sidewalks or pedestrian paths.



 1222 E 13th Ave, Eugene, OR 97403, USA

1. Head **east** on **E 13th Ave** go 164 ft
total 164 ft

 2. Turn left at **Onyx St** go 0.1 mi
About 3 mins total 0.2 mi

 3. Turn left at **Franklin Blvd** go 0.4 mi
About 8 mins total 0.6 mi

4. Continue onto **E Broadway** go 0.1 mi
About 2 mins total 0.7 mi

 5. Turn right at **Hilyard St** go 400 ft
About 2 mins total 0.7 mi

 6. Slight left at **Ruth Bascom Bike Path** go 0.1 mi
About 3 mins total 0.9 mi

7. Continue straight onto **E 6th Ave** go 0.4 mi
About 8 mins total 1.3 mi

 8. Turn right at **Willamette St** go 312 ft
Destination will be on the left total 1.4 mi
About 1 min

 520 Willamette St, Eugene, OR 97401, USA

These directions are for planning purposes only. You may find that construction projects, traffic, weather, or other events may cause conditions to differ from the map results, and you should plan your route accordingly. You must obey all signs or notices regarding your route.

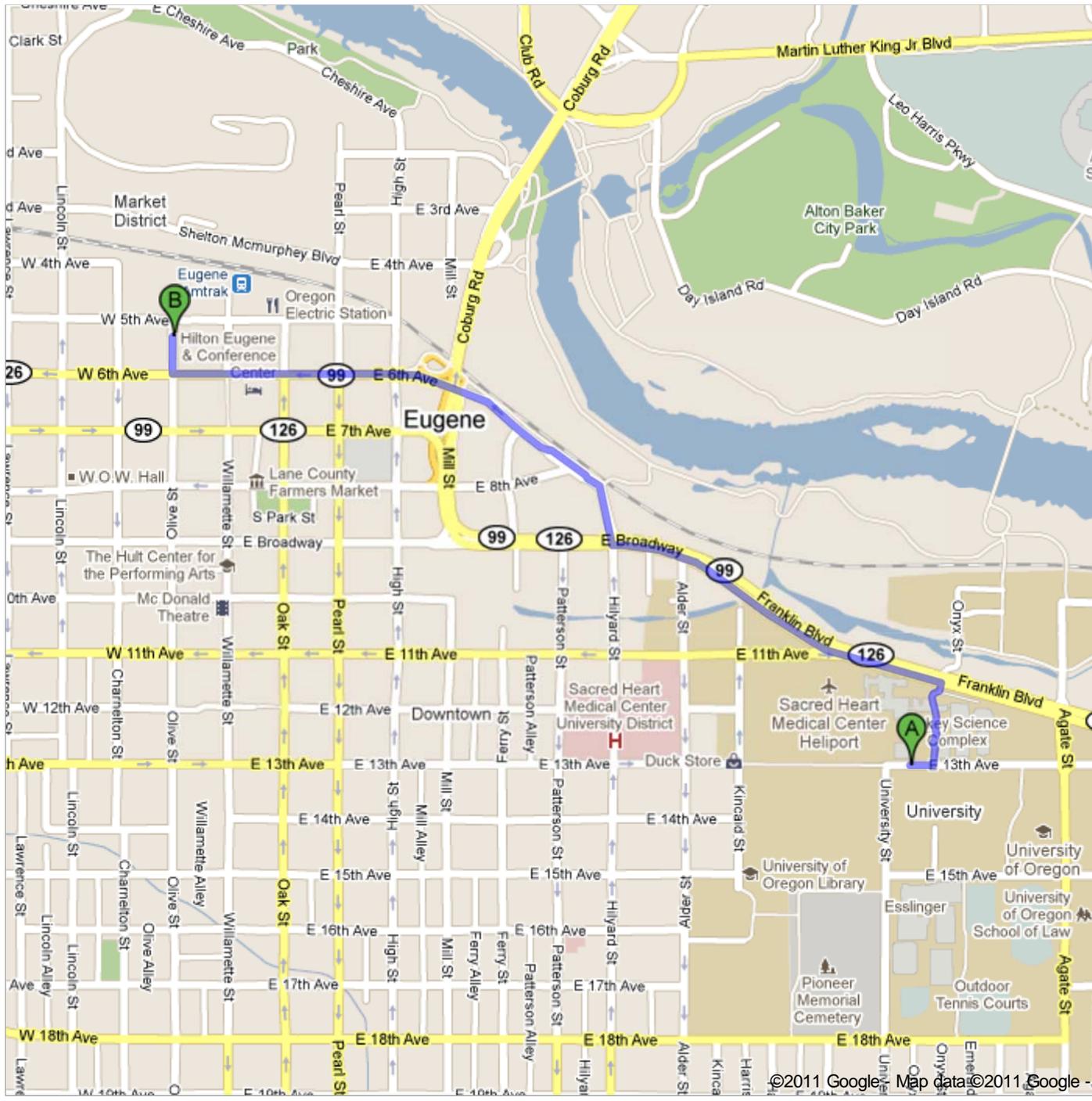
Map data ©2011 Google

Directions weren't right? Please find your route on maps.google.co.uk and click "Report a problem" at the bottom left.



Directions to 575 Olive St, Eugene, OR 97401, USA
1.4 mi – about 28 mins

Walking directions are in beta.
Use caution – This route may be missing sidewalks or pedestrian paths.



 1222 E 13th Ave, Eugene, OR 97403, USA

1. Head **east** on **E 13th Ave** go 164 ft
total 164 ft
-  2. Turn left toward **Franklin Blvd** go 0.1 mi
total 0.2 mi
About 2 mins
-  3. Turn left at **Franklin Blvd** go 0.4 mi
total 0.5 mi
About 8 mins
4. Continue onto **E Broadway** go 0.1 mi
total 0.6 mi
About 2 mins
-  5. Turn right at **Hilyard St** go 433 ft
total 0.7 mi
About 2 mins
-  6. Slight left at **Ruth Bascom Bike Path** go 0.1 mi
total 0.9 mi
About 3 mins
7. Continue straight onto **E 6th Ave** go 0.5 mi
total 1.4 mi
About 10 mins
-  8. Turn right at **Olive St** go 269 ft
total 1.4 mi
Destination will be on the right
About 1 min

 575 Olive St, Eugene, OR 97401, USA

These directions are for planning purposes only. You may find that construction projects, traffic, weather, or other events may cause conditions to differ from the map results, and you should plan your route accordingly. You must obey all signs or notices regarding your route.

Map data ©2011 Google

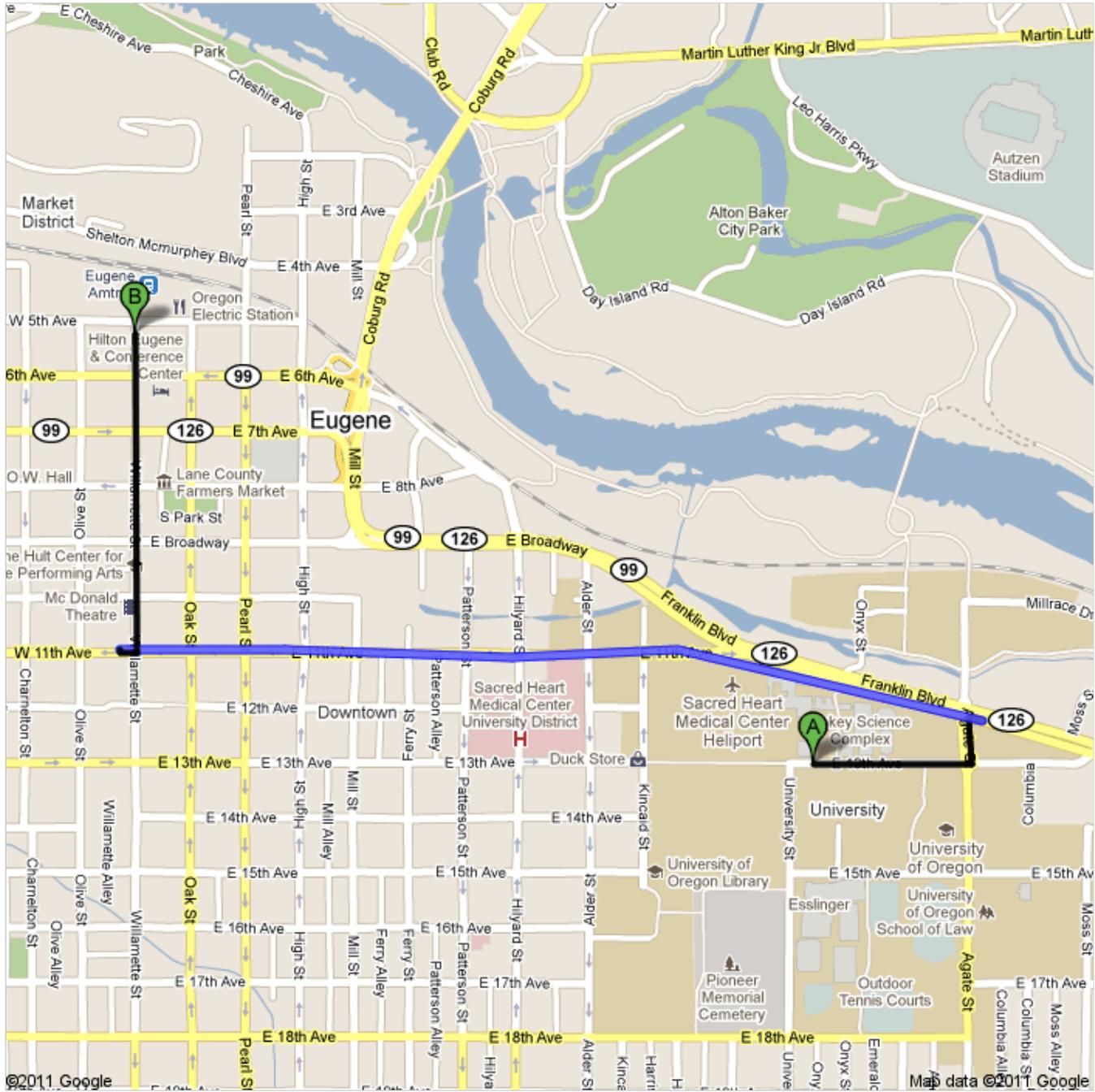
Directions weren't right? Please find your route on maps.google.co.uk and click "Report a problem" at the bottom left.

ATTACHMENT

B



Start 1222 E 13th Ave, Eugene, OR 97403, USA
End 520 Willamette St, Eugene, OR 97401, USA
When 20/01/2011 after 12:00
Cost \$1.50 (vs. \$1.02 driving)
Duration 24 mins total



 1222 E 13th Ave, Eugene, OR 97403, USA

 Walk to EmX Agate Station About 6 mins

 **EmX Agate Station** 12:13 - 12:22
Bus - EmX towards EmX EUGENE STATION (9 mins, 4 stops)

 **11th & Willamette** About 9 mins
Walk to 520 Willamette St, Eugene, OR 97401, USA

 520 Willamette St, Eugene, OR 97401, USA

Local agency information: Lane Transit District

These directions are for planning purposes only. You may find that construction projects, traffic, weather, or other events may cause conditions to differ from the map results, and you should plan your route accordingly. You must obey all signs or notices regarding your route.

Map data ©2011 Google



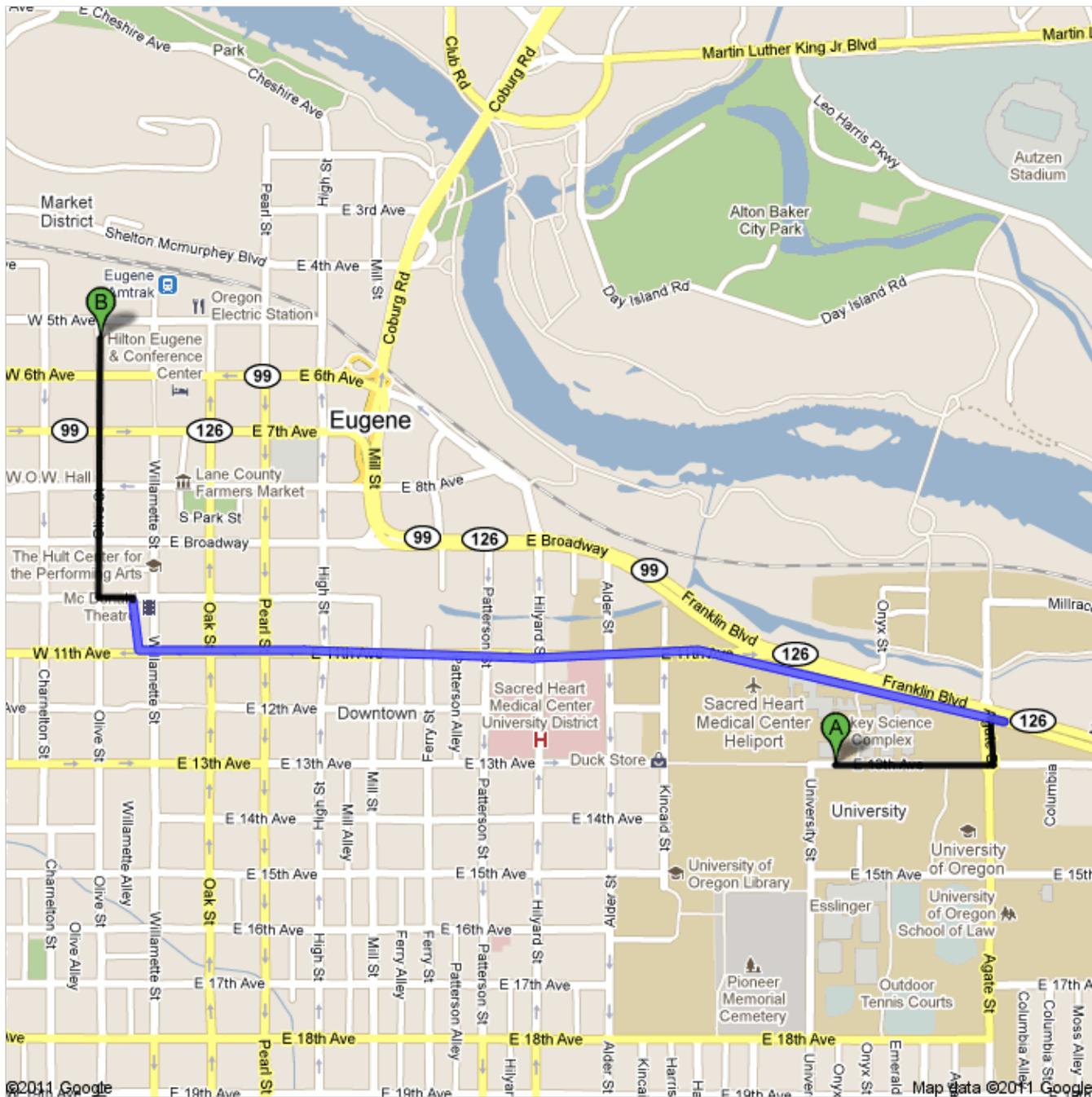
Start **1222 E 13th Ave, Eugene, OR 97403, USA**

End **575 Olive St, Eugene, OR 97401, USA**

When **20/01/2011 after 12:00**

Cost **\$1.50 (vs. \$1.06 driving)**

Duration **24 mins total**



 1222 E 13th Ave, Eugene, OR 97403, USA

 Walk to EmX Agate Station About 6 mins

 **EmX Agate Station** 12:13 - 12:23
Bus - EmX towards EmX EUGENE STATION (10 mins, 5 stops)

 **Eugene Station, Bay T** About 8 mins
Walk to 575 Olive St, Eugene, OR 97401, USA

 575 Olive St, Eugene, OR 97401, USA

Local agency information: Lane Transit District

These directions are for planning purposes only. You may find that construction projects, traffic, weather, or other events may cause conditions to differ from the map results, and you should plan your route accordingly. You must obey all signs or notices regarding your route.

Map data ©2011 Google