

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

In the Matter of:

Venice Main Post Office
Venice, CA 90291
(Mark Rayavec and Venice
Stakeholders Association,
Petitioners)

Docket No. A2012-17

**UNITED STATES POSTAL SERVICE RESPONSE TO MOTION TO COMPEL
REDACTED INFORMATION NOT INCLUDED
IN RESPONSE TO ORDER NO. 967
(December 14, 2011)**

On November 16, 2011, the Commission issued Order No. 967, which adjusted the procedural schedule and directed the Postal Service to “file the Administrative Record” regarding the relocation of the Venice Main Post Office by November 28. On November 28, the Postal Service moved for an extension of time to respond to Order No. 967 until December 2, 2011. On December 2, 2011, the Postal Service filed its response to Order No. 967, and attached to it responsive documents because there is no official administrative record to provide. On December 7, 2011, Petitioners filed a motion to compel the redacted information and any other relevant documents not included in the Postal Service’s Response to Order No. 967.

The Postal Service has no obligation to provide an administrative record in this proceeding because the Commission lacks jurisdiction to hear Petitioner’s

appeal.¹ The Commission lacks jurisdiction because this appeal involves only a relocation, and no discontinuance has occurred or will occur. Motion of United States Postal Service to Dismiss Proceedings, PRC Docket No. A2012-17 (October 27, 2011). The content of an administrative record, or whether an administrative record exists at all, has no bearing on whether the Commission has jurisdiction to hear an appeal of a relocation action. Whether the Commission has jurisdiction depends upon the scope of the Commission's statutory authority, and not on any activity conducted by the Postal Service.

Because this docket involves a relocation, and not a discontinuance of service, the Postal Service did not apply the procedures that relate to the discontinuance of Post Offices under 39 C.F.R. § 241.3. Thus, an administrative record of the type normally generated in discontinuance actions does not exist. Nevertheless, in response to the Commission's Order, without waiving its position regarding the Commission's lack of jurisdiction, the Postal Service assembled documents relating to the relocation decision for the Commission's use in deciding the Postal Service's pending Motion to Dismiss.² These documents explain the basis for the relocation action regarding the Venice Main Post Office, and thereby furnish the Commission with abundant information to enable it to grant the Postal Service's pending Motion to Dismiss Proceedings.

¹ The procedural requirements of 39 U.S.C. § 404(d) do not apply because the relocation of the Venice Main Post Office is not a closure under 39 U.S.C. § 404(d). Motion of United States Postal Service to Dismiss Proceedings, PRC Docket No. A2012-17 (October 27, 2011).

² The Postal Service furnished documents responsive to the request, much as it would have done so had the request arisen in the context of a Freedom of Information Act (FOIA) request. By furnishing such documents, the Postal Service in no way intended to waive its right to object to the Commission's jurisdiction to entertain the Petitioners' submissions.

The Postal Service also submitted a privilege log with its Response to Order No. 967, which explains the basis for the redactions and the omissions. As indicated in the privilege log, the information redacted or omitted from the Postal Service's Response consists of: (1) financial or commercial information protected under 39 U.S.C. § 410(c)(2) by virtue of FOIA Exemption 3; (2) information related to the Postal Services internal decision-making process, which is protected under the deliberative process privilege under FOIA Exemption 5; or (3) communications between the Postal Service and its attorneys, which is protected under the attorney-client privilege under FOIA Exemption 5. The redacted and omitted documents, as listed in the Postal Service's Response, are protected from disclosure in this proceeding, and Petitioners have not demonstrated otherwise.

Without citing to any factual foundation for their claimed belief to the contrary, Petitioners suggest that the Postal Service's Response is deficient because the Postal Service has more information in its possession that was not included in the Postal Service's Response. See Petitioners' Motion to Compel Redacted Information and Any Additional Relevant Documentation Not Included in the Administrative Record A2012-17 (December 2, 2011). Petitioners fail to understand that no legal or procedural requirement of any kind exists that would lead to creation of documents that one might expect to find in an administrative record supporting a discontinuance decision—because this matter involves a relocation, not a closing or consolidation. The documents assembled and submitted to the Commission consist of the relevant and non-privileged

documents available from various sources within the Postal Service. See Motion of the United States Postal Service for an Extension of Time to File the Administrative Record, PRC Docket No. A2012-17 (November 28, 2011). The Postal Service's response, therefore, is in no way deficient.

Moreover, the response is more than adequate for the Commission to decide the threshold issue of its jurisdiction – a decision it necessarily must make before deciding this motion to compel – because it resolves any doubt about whether this action is a relocation outside the scope of the Commission's jurisdiction. Nothing in the materials submitted by either side suggests that the Postal Service plans to discontinue the Venice Post Office. A Post Office is not a building; rather, it consists of the postal services provided to the public in a given community. The Venice Post Office is moving across the street, from one place to another; this is the dictionary definition of “relocate.” OXFORD AMERICAN DICTIONARY at 570 (New York 1980) (“to move (a person or a thing) to a different place”). Because the Commission lacks jurisdiction over a challenge to a relocation decision, and the information provided to date is sufficient to establish that this is a relocation, the Commission should deny the petitioner's motion to compel and grant the Postal Service's motion to dismiss.

The Postal Service accordingly urges the Commission to deny Petitioners' Motion, and promptly rule on the Postal Service's pending Motion to Dismiss.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Anthony F. Alverno
Chief Counsel, Global Business

Shayla N. McGee

475 L'Enfant Plaza, S.W.
Washington, D.C. 20260-1137
(202) 268-2956; Fax -5278
December 14, 2011