

due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

*It is ordered:*

1. The procedural schedule listed below is hereby adopted.

2. Pursuant to 39 U.S.C. 505, Robert N. Sidman is designated officer of the

Commission (Public Representative) to represent the interests of the general public.

3. The Secretary shall arrange for publication of this notice and order and

Procedural Schedule in the **Federal Register**

By the Commission.

**Shoshana M. Grove,**  
*Secretary.*

#### PROCEDURAL SCHEDULE

November 29, 2011 .....	Filing of Appeal.
December 14, 2011 .....	Deadline for the Postal Service to file the applicable administrative record in this appeal.
December 14, 2011 .....	Deadline for the Postal Service to file any responsive pleading.
January 9, 2012 .....	Deadline for notices to intervene ( <i>see</i> 39 CFR 3001.111(b)).
January 3, 2012 .....	Deadline for Petitioners' Form 61 or initial brief in support of petition ( <i>see</i> 39 CFR 3001.115(a) and (b)).
January 23, 2012 .....	Deadline for answering brief in support of the Postal Service ( <i>see</i> 39 CFR 3001.115(c)).
February 7, 2012 .....	Deadline for reply briefs in response to answering briefs ( <i>see</i> 39 CFR 3001.115(d)).
February 14, 2012 .....	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings ( <i>see</i> 39 CFR 3001.116).
March 16, 2012 .....	Expiration of the Commission's 120-day decisional schedule ( <i>see</i> 39 U.S.C. 404(d)(5)).

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#### POSTAL REGULATORY COMMISSION

[Docket No. A2012-85; Order No. 1041]

#### Post Office Closing

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** This document informs the public that an appeal of the closing of the Milan, Kansas post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

**DATES:** Deadline for notices to intervene: January 9, 2012, 4:30 p.m., Eastern Time. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

**ADDRESSES:** Submit comments electronically by accessing the "Filing Online" link in the banner at the top of the Commission's Web site (<http://www.prc.gov>) or by directly accessing the Commission's Filing Online system at <https://www.prc.gov/prc-pages/filing-online/login.aspx>. Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, at (202) 789-6820 (case-related information) or [DocketAdmins@prc.gov](mailto:DocketAdmins@prc.gov) (electronic filing assistance).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, pursuant to 39 U.S.C.

404(d), on November 29, 2011, the Commission received a petition for review of the Postal Service's determination to close the Milan post office in Milan, Kansas. The petition for review was filed by Michele Norris (Petitioner) and is postmarked November 18, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012-85 to consider Petitioner's appeal. If Petitioner would like to further explain her position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than January 3, 2012.

*Categories of issues apparently raised.* The Petitioner contends that the Postal Service failed to consider whether or not it will continue to provide a maximum degree of effective and regular postal services to the community (*see* 39 U.S.C. 404(d)(2)(A)(iii)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record is within 15 days after the date in which the petition for review was filed with the Commission. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service is also within 15 days after the date in which the petition for review was filed with the Commission.

*Availability; Web site posting.* The Commission has posted the appeal and supporting material on its Web site at <http://www.prc.gov>. Additional filings

in this case and participant's submissions also will be posted on the Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at (202) 789-6873 or via electronic mail at [prc-webmaster@prc.gov](mailto:prc-webmaster@prc.gov).

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at [prc-dockets@prc.gov](mailto:prc-dockets@prc.gov) or via telephone at (202) 789-6846.

*Filing of documents.* All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, <http://www.prc.gov>, unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site, <http://www.prc.gov>, or by contacting the Commission's docket section at [prc-dockets@prc.gov](mailto:prc-dockets@prc.gov) or via telephone at (202) 789-6846.

Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

*Intervention.* Persons, other than the Petitioners and respondents, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before January 9, 2012. A notice of intervention

shall be filed using the Internet (Filing Online) at the Commission's Web site, <http://www.prc.gov>, unless a waiver is obtained for hardcopy filing. See 39 CFR 3001.9(a) and 3001.10(a).

**Further procedures.** By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. See 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of

expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. See 39 CFR 3001.21.

*It is ordered:*

1. The procedural schedule listed below is hereby adopted.

2. Pursuant to 39 U.S.C. 505, Patricia A. Gallagher is designated officer of the Commission (Public Representative) to represent the interests of the general public.

3. The Secretary shall arrange for publication of this notice and order and Procedural Schedule in the **Federal Register**.

By the Commission.  
**Shoshana M. Grove,**  
Secretary.

#### PROCEDURAL SCHEDULE

November 29, 2011 .....	Filing of Appeal.
December 14, 2011 .....	Deadline for the Postal Service to file the applicable administrative record in this appeal.
December 14, 2011 .....	Deadline for the Postal Service to file any responsive pleading.
January 9, 2012 .....	Deadline for notices to intervene (see 39 CFR 3001.111(b)).
January 3, 2012 .....	Deadline for Petitioners' Form 61 or initial brief in support of petition (see 39 CFR 3001.115(a) and (b)).
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February 7, 2012 .....	Deadline for reply briefs in response to answering briefs (see 39 CFR 3001.115(d)).
February 14, 2012 .....	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (see 39 CFR 3001.116).
March 16, 2012 .....	Expiration of the Commission's 120-day decisional schedule (see 39 U.S.C. 404(d)(5)).

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#### POSTAL REGULATORY COMMISSION

[Docket No. MC2008-1 (Phase IIR); Order No. 1043]

#### Review of Nonpostal Services

**AGENCY:** Postal Regulatory Commission.  
**ACTION:** Notice.

**SUMMARY:** The Commission is establishing a docket to consider procedures on remand in a case involving licensing of Postal Service intellectual property for use on Mailing and Shipping products for sale by licensees at non-postal retail outlets. This notice provides background information and invites comments. It also addresses intervention by persons who did not participate earlier.

**DATES:** Comments are due: January 13, 2012. Reply comments are due: January 23, 2012.

**ADDRESSES:** Submit comments electronically by accessing the "Filing Online" link in the banner at the top of the Commission's Web site (<http://www.prc.gov>) or by directly accessing the Commission's Filing Online system at <http://www.prc.gov/prc-pages/filing-online/login.aspx>. Persons who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

#### FOR FURTHER INFORMATION CONTACT:

Stephen L. Sharfman, General Counsel, at (202) 789-6820 (case-related information) or [DocketAdmins@prc.gov](mailto:DocketAdmins@prc.gov) (electronic filing assistance).

**SUPPLEMENTARY INFORMATION:** *Regulatory History*, 72 FR 73909 (December 28, 2007); 74 FR 2636 (January 15, 2009).

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#### I. Introduction

On June 7, 2011, the United States Court of Appeals for the District of Columbia Circuit issued an opinion in *LePage's 2000, Inc. and LePage's Products, Inc. v. Postal Regulatory Commission*, No. 10-1031.<sup>1</sup> The court granted petitions for review and vacated the Commission's Order No. 392 in Phase II of Docket No. MC2008-1.<sup>2</sup> The court, which issued its remand July 26, 2011, found that the Commission had not adequately justified its findings regarding the licensing of Postal Service intellectual property for use on Mailing and Shipping products for sale by licensees at non-postal retail outlets.<sup>3</sup> It

<sup>1</sup> *LePage's 2000, Inc. v. Postal Regulatory Commission*, 642 F.3d 225 (DC Cir. 2011) (*LePage's v. PRC*). Consolidated with Nos. 10-1033, 10-1279, and 10-1294.

<sup>2</sup> Phase II Review of Nonpostal Services Under the Postal Accountability and Enhancement Act, January 14, 2010, Order No. 392.

<sup>3</sup> The court referred to the licensing of third-party mailing and shipping supplies, which includes

instructed the Commission to explain its departure from its findings in Phase I of this proceeding in three respects: (1) The classification of the licensing of intellectual property for use on Mailing and Shipping products as nonpostal; (2) the public need for licensing the Postal Service's intellectual property for use on Mailing and Shipping products; and (3) the private sector's ability to meet that need. In this order, the Commission establishes procedures to address the issues on remand.

#### II. Consideration of Issues on Remand

##### A. Classification of Licensing of Mailing and Shipping Products as a Nonpostal Service

In its brief to the court, LePage's argued that the Commission's failure to consider whether the licensed products it produced for sale at non-Postal Service retail outlets were a "postal service" was arbitrary and capricious.<sup>4</sup> The Commission responded that LePage's comparison of its products to postal products, such as ReadyPost, was misplaced because it wrongly focused on the sale of its products rather than the service offered by the Postal Service, i.e., licensing. See *LePage's v. PRC*, *supra*, 642 F.3d 231.

The court found that "[t]he Commission may well be correct that

LePage's licensing agreement, as the Bubblewrap program. *LePage's v. PRC* at 226. This order uses the term "Mailing and Shipping products".

<sup>4</sup> Brief for Petitioners *LePage's 2000, Inc. and LePage's Products, Inc.*, Nos. 10-1031, 10-1033, 10-1279, 10-1294 (consolidated), January 29, 2011, at 28.