



# PUBLIC NOTICE

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## FCC'S OFFICE OF GENERAL COUNSEL UPDATES REQUIREMENTS AND GUIDANCE FOR LITIGANTS SEEKING TO INVOKE THE JUDICIAL LOTTERY PROCEDURE

Section 2112(a) of Title 28 of the United States Code governs which court will hear the consolidated case when petitions for review challenging the same Commission order are filed in two or more federal circuit courts of appeals. That statute establishes a system of random selection – a lottery – to determine which court will review the Commission order in those circumstances. Commission Rule 1.13, 47 C.F.R. § 1.13, specifies the requirements that a person filing a petition for review of a Commission order must satisfy to invoke the so-called judicial “lottery” procedure of 28 U.S.C. § 2112(a). These requirements are necessary to enable the Commission to fulfill its obligations under the statute to notify the Judicial Panel on Multidistrict Litigation (which conducts the lottery) of the various petitions for review and to file the record of the case in the proper court.

To assist persons seeking to invoke the judicial lottery procedure, this Public Notice outlines the requirements of Rule 1.13. Under the rule, a petitioner seeking to invoke the judicial lottery procedure must complete two requirements within ten days after issuance of the FCC order for which review is being sought. *See* 47 C.F.R. §§ 1.13 (a)(2), 1.4(b) (specifying rules for computation of time and determining the date of issuance). Failure to complete these requirements within the ten-day deadline will prevent a petition for review from qualifying for a judicial lottery. The two requirements are:

- 1. File a petition for review in a proper federal circuit court of appeals and obtain a date-stamped copy of the petition from the court, bearing the case number assigned by the court, if available. Section 2112(a)(1) indicates that the petition must be stamped by the court with the date of filing, but it has come to our attention that some courts of appeals, after conversion to electronic filing, no longer provide stamped copies of filings. *See Local Union 36 v. NLRB*, \_\_\_ F.3d \_\_\_, 2010 WL 4541793 (2d Cir. Nov. 12, 2010). If a date-stamped copy of the petition is not available because the court accepts**

**only electronic filing of petitions for review, it is acceptable to obtain a form of the petition that proves that it was filed within ten days after issuance of the FCC order. For example, for courts that allow ECF filing of petitions for review, the rule will be satisfied if the petition is accompanied by a notice of docket activity issued by a court or a copy of the petition printed from ECF bearing the date of filing. For courts that allow petitions for review to be emailed to the court, the rule will be satisfied by accompanying a copy of the petition with the email, bearing a date and time, that electronically transmitted the petition to the court.**

- 2. Deliver a paper copy of your petition for review – bearing the date stamp of the circuit court of appeals or other indicia of filing as described above and case number, if available – to the FCC’s Office of General Counsel, 8<sup>th</sup> Floor, 445 12<sup>th</sup> Street, SW, Washington, D.C., within the required ten-day period.**

This Public Notice also offers the following guidance to litigants to avoid problems and to make the process go as smoothly as possible:

- Litigants are urged to contact the Office of General Counsel at 202-418-1700 in advance to notify OGC personnel that you intend to invoke the lottery procedure and to make arrangements to deliver your petition for review to the Office of General Counsel.
- Note: Access to the FCC Headquarters building is limited. Persons who are not government employees or contractors must obtain a visitor’s pass from the guard desk at the 12<sup>th</sup> Street entrance, before proceeding to the Office of General Counsel on the 8<sup>th</sup> floor of the building. Again, calling the Office of General Counsel in advance can facilitate this process.
- A petition for review must be received by the Office of General Counsel no later than 5:30 p.m., Eastern Time, on the tenth day of the filing period.
- A stamp indicating the time and date received by the Office of General Counsel will constitute proof of receipt by OGC. The best practice is to obtain this OGC time/date stamp, to avoid any question whether your petition for review was timely received by the Office.
- Unlike most pleadings filed with the Commission, the petition for review in these limited circumstances must be delivered directly to the Office of General Counsel on the 8<sup>th</sup> Floor of the FCC Headquarters building. Litigants are strongly urged to hand deliver their petition for review to the Office of General Counsel – hand delivery is the preferred method and will ensure that you receive an OGC time/date stamp as proof of timely filing. Should you attempt to submit your petition for review by some other means or to some other location (for example, the Commission’s Office of the Secretary, the window in the 12<sup>th</sup> Street lobby of the FCC headquarters building, or an off-site FCC mail intake facility), you run the risk that your petition will not be received by the Office of General Counsel in time to be eligible for a judicial lottery. The petition must be received by the Office of General Counsel by the deadline.

Note: this Public Notice supersedes the Commission's January 24, 2008, Public Notice on judicial lottery requirements, DA 08-150, published at 23 FCC Rcd 806.

For further information contact Richard K. Welch, Deputy Associate General Counsel, Litigation Division, Office of General Counsel, at 202-418-7225.