



PUBLIC NOTICE

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DA 16-759

July 5, 2016

**OFFICE OF GENERAL COUNSEL ANNOUNCES JULY 25, 2016 EFFECTIVE DATE OF NEW
FCC RULE REGARDING NOTICE OF LITIGATION BY EMAIL;
UPDATES GUIDANCE FOR LITIGANTS SEEKING TO INVOKE THE JUDICIAL LOTTERY
PROCEDURE**

Litigants appealing or petitioning for review of an FCC Order in federal court are required to provide the Commission notice of the litigation in certain circumstances and are encouraged to do so in other circumstances. Effective July 25, 2016, the Commission has amended its Rule 1.13, 47 C.F.R. § 1.13, to allow and in certain circumstances require parties to give such notice by email to the address LitigationNotice@fcc.gov. See *Service by Email for Notice of Petitions for Review and Appeals*, 81 Fed. Reg. 40820-01 (June 23, 2016) (to be codified at 47 C.F.R. § 1.13). The procedures that apply vary for each of three categories of litigant:

- Litigants petitioning for review of a Commission Order pursuant to 47 U.S.C. § 402(a) who wish to take advantage of the random selection procedures set out in 28 U.S.C. § 2112, as described below;
- Litigants petitioning for review of a Commission Order pursuant to 47 U.S.C. § 402(a) who do not wish to take advantage of those random selection procedures; and
- Litigants appealing a Commission Order pursuant to 47 U.S.C. § 402(b).

Each is discussed below.

402(a) LITIGANTS WHO SEEK TO PARTICIPATE IN A JUDICIAL LOTTERY

Section 2112(a) of Title 28 of the United States Code governs which court will hear the consolidated case when multiple petitions for review challenging the same agency 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 agency order in those circumstances. A party who seeks judicial review of a Commission Order pursuant to 47 U.S.C. § 402(a) may seek to invoke this judicial lottery procedure. Commission Rule 1.13 specifies the requirements that such a party must satisfy to invoke the lottery procedure. 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.

Under Rule 1.13, such a party must complete two requirements within ten days after issuance of the FCC order for which review is sought. *See* 47 C.F.R. §§ 1.13 (a)(3), 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 disqualify a petition for review 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. 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 the date on which it was filed. 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. Email an electronic copy of your petition for review to the email address LitigationNotice@fcc.gov. If you have a paper, date-stamped copy of your petition, you must scan or otherwise convert it to electronic form in order to transmit it by email. The Office of General Counsel must receive the emailed copy of your petitions for review by 5:30 p.m. Eastern Time on the tenth day of the filing period. A return email from the Office of General Counsel acknowledging receipt of the petition for review will constitute proof of filing.

Note: If you are not represented by counsel and are unable to use email to effect service, you must instead, within ten days after the issuance of the order on appeal, serve a paper, date-stamped copy of your petition for review in person on the General Counsel in the Office of General Counsel, 445 12th Street, SW., Washington, DC 20554. Only parties not represented by counsel may use this method. To do so, telephone the Litigation Division of the Office of General Counsel beforehand to make arrangements at 202-418-1740. Parties are advised to call at least one day before service must be effected.

402(a) LITIGANTS WHO DO NOT SEEK TO PARTICIPATE IN A JUDICIAL LOTTERY

A litigant who seeks judicial review pursuant to 47 U.S.C. 402(a) but does not seek to participate in a judicial lottery is not required by law to serve notice of a petition for review on the Commission. However, in the interest of administrative efficiency, the Commission requests that such a petitioner nevertheless serve a copy of its petition on the FCC Office of General Counsel. Parties are encouraged (but not required) to serve such notice by email to the address LitigationNotice@fcc.gov.

402(b) LITIGANTS

Litigants who appeal a Commission order under 47 U.S.C. § 402(b), which applies to certain licensing-related FCC actions, are required to give notice of the appeal to the Commission. *See* 47 U.S.C. § 402(c). The Commission has authorized and encourages litigants to provide such notice by email to the address LitigationNotice@fcc.gov. *See* 47 C.F.R. § 1.13(b). FCC rules do not *require* email notice, however, and parties may use non-electronic means of service, such as U.S. mail, as permitted by the Federal Rules of Appellate Procedure and any applicable local rules.

Note: This Public Notice supersedes the Commission's January 13, 2011, Public Notice on judicial lottery requirements, DA 11-63, published at 26 FCC Rcd 245.

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

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