

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 1.13 of the)
Commission’s Rules)

ORDER

Adopted: January 24, 2006

Released: January 26, 2006

By the Commission:

1. By this order, we amend 47 C.F.R. § 1.13(a)(2) to eliminate an inconsistency with the Federal Rules of Appellate Procedure (Federal Rules) that arose as a result of the 2002 amendments to the Federal Rules. Section 1.13 of the Commission’s Rules implements the provisions of 28 U.S.C. § 2112. That statutory provision, in relevant part, is applicable to situations where different parties seeking review of the same agency order file petitions for review in different courts of appeals. Under 28 U.S.C. § 2112(a), if, “within ten days after issuance of the order,” an agency receives two or more petitions for review filed with different courts of appeals, that agency is required to notify the judicial panel on multidistrict litigation, which then randomly selects one of those courts of appeals to consider the petitions for review. Section 1.13(a)(1) of the Commission’s Rules implements this provision by specifying that a party wishing to avail itself of these procedures must, within ten days after issuance of an order, file with the Commission’s Office of General Counsel (OGC) a copy of its petition for review as filed and date-stamped by the court of appeals with which it was filed.

2. The inconsistency which we correct by this order concerns the manner in which the ten-day period for filing petitions with OGC is computed. Section 1.13(a)(2) of the Commission’s Rules provides that “[c]omputation of time of the ten-day period for filing copies of petitions for review shall be governed by § 1.4 of the Commission’s Rules.” Section 1.4(g), in turn, sets forth the general Commission rule that, unless otherwise provided, intermediate holidays shall not be counted only in determining filing periods of less than seven days. The term holidays is defined to include Saturdays, Sundays, other recognized federal legal holidays, and other days on which the Commission’s offices are closed. 47 C.F.R. § 1.4(e).

3. Because the period for filing petitions for review with OGC pursuant to section 2112(a) for invoking the random selection process is not less than seven days, weekends

and holidays would appear to be counted in determining the ten-day period under existing section 1.13. Such a determination, however, conflicts with current Federal Rule of Appellate Procedure 26(a)(2). That rule applies “in computing any period of time specified in these rules or in any local court rule, court order, or applicable statute,” and now states that computations must “[e]xclude intermediate Saturdays, Sundays, and legal holidays when the period is less than 11 days, unless stated in calendar days.”¹ Thus, Rule 26(a)(2), in contrast to existing 47 C.F.R. § 1.13, excludes weekends and holidays in making the relevant ten-day computation under 28 U.S.C. § 2112. Because the Commission’s Rules should be consistent with, rather than conflict with, the Federal Rules of Appellate Procedure, we will amend section 1.13(a)(2) to replace the reference to section 1.4 of the Commission’s Rules with a reference to Rule 26 of the Federal Rules of Appellate Procedure, thus making clear that the ten-day period under section 1.13 excludes weekends and holidays.²

3. Authority for this rulemaking is contained in 47 U.S.C. §§ 154(i) and 154(j) and 28 U.S.C. § 2112.

4. ACCORDINGLY, IT IS ORDERED, That 47 C.F.R. § 1.13 IS AMENDED as set forth in the attached Appendix effective 30 days subsequent to publication in the Federal Register.³

5. For further information, contact David S. Senzel, (202) 418-1720, Office of General Counsel.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹ Prior to amendments made in 2002, Rule 26(a)(2), consistent with existing section 1.13, provided that weekends and holidays would be excluded when “the period is less than 7 days, unless stated in calendar days.”

² We note that Rule 26(a)(4) defines legal holidays to mean New Year’s Day, Martin Luther King’s Birthday, President’s Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day, or other various government-declared holidays. It does not, however, define other days that the court is closed as “holidays.” Rather, if the act to be done is filing a paper in court, Rule 26(a)(3) excludes from being counted as a day the last day of the filing period when the weather or other conditions makes the clerk’s office inaccessible. We will apply the same rule when the Commission is closed on the last day of the filing period. In those cases, the petition must be filed the next business day on which the Commission is open.

³ Notice and comment is not required to amend a procedural rule. See 5 U.S.C. § 553(b).

APPENDIX

Part 1 of Title 47 of the Code of Federal Regulations is amended as follows:

Part 1 – Practice and Procedure

1. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154, 303, and 309(j) unless otherwise noted..

2. Section 1.13 is amended by revising paragraph (a)(2) to read as follows:

§ 1.13 Filing of petitions for review and notices of appeals of Commission orders.

(a)(1) * * * *

(2) Computation of time of the ten-day period for filing copies of petitions for review of a Commission order shall be governed by Rule 26 of the Federal Rules of Appellate Procedure. The date of issuance of a Commission order for purposes of filing copies of petitions for review shall be the date of public notice as defined in § 1.4(b) of the Commission's Rules, 47 CFR 1.4(b).

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