

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

In the Matter of)
)
ROBERT NEWTON)
)
On Request for Inspection of Records)

MEMORANDUM OPINION AND ORDER

Adopted: July 26, 2013

Released: July 30, 2013

By the Commission:

1. By this Memorandum Opinion and Order, we dismiss as untimely an application for review filed by Robert Newton.¹ Mr. Newton requests review of a decision by the Commission's Freedom of Information Act (FOIA) Public Liaison.²

2. On December 11, 2012, the Commission's Public Liaison advised Mr. Newton that the records he sought in a FOIA request filed with the Commission³ were not "within the Commission's jurisdiction" and that they "may be in the possession of the Department of the Navy."⁴ On April 29, 2013, Mr. Newton filed an application for review of that decision, stating that "[d]ue to unforeseen medical reasons, . . . [he] was unable to send this request within sixty days[.]"⁵

3. The FOIA Control Officer's December 11, 2012 decision in which she informed Mr. Newton that the records he sought were not within the Commission's jurisdiction,⁶ *i.e.*, that

¹ See letter from Robert Newton to Stephanie D. Kost, FCC FOIA Public Liaison (Apr. 13, 2013) (*AFR*).

² See letter from Stephanie D. Kost, FCC FOIA Public Liaison to Robert Newton (Dec. 11, 2012) (*December 11, 2012 Decision*).

³ See letter from Robert Newton to FCC at 1 (Oct. 14, 2012) (requesting (1) copies of "Naval Audit Service/Department of Navy/DoD wiretap or related contractor wiretap order, signal interference, communications, and all signal information for" two wireless cell phone numbers and two Comcast cell phone account numbers and (2) "[a]ny records pertaining to electronic communication or Radio Frequency Communication through RFID chips coming from my person").

⁴ *December 11, 2012 Decision* at 1.

⁵ See *AFR* at 1 (contending that "an adequate search . . . was not accomplished").

⁶ See 47 C.F.R. § 0.461(f)(ii) ("If it is determined that the FOIA request seeks only records of another agency or department, the FOIA requester will be so informed by the FOIA Control Officer and will be directed to the correct agency or department.").

the Commission had no responsive records, was “an initial action on a request for inspection of records” subject to the application for review provisions of Section 0.461(j) of the Commission’s rules, 47 C.F.R. § 0.461(j). That rule provides that applications for review “shall be filed within 30 calendar days after the date of the written ruling by the custodian of the records.”⁷ The 30 days to be counted in computing the time period began on December 12, 2012, the day after the date appearing on the Public Liaison’s decision.⁸ Thus, Mr. Newton was required to file his application for review by January 10, 2013, the 30th day. Mr. Newton’s application for review is dated April 13, 2013, but was not received until April 29, 2013.⁹ Under the Commission’s rules, documents are considered to be filed on their receipt.¹⁰ Mr. Newton’s filing was more than 90 days late and we therefore find it was untimely.¹¹

4. We also find that Mr. Newton’s claim of unspecified, “unforeseen medical reasons” provides insufficient grounds to waive the 30-day deadline because we do not waive filing deadlines “in the absence of extremely unusual circumstances.”¹² Here, the application for review provides no explanation or substantiation for why the applicant’s “unforeseen medical reasons” should be considered sufficiently unusual to waive the filing deadline by more than three months. Rather, the applicant states that he was “unable to send this request within sixty days”¹³ without further explanation. Even if we were inclined to grant a waiver where there is a

⁷ See 47 C.F.R. § 0.461(j). The 30-day deadline applies to all applications for review subject to Section 0.461(j), including those relating to “initial actions” taken by the FOIA Control Officer pursuant to Section 0.461(f)(2)(ii). We note that even if we were to determine that the more general application for review provisions under Section 1.115 of the Commission’s rules, 47 C.F.R. § 1.115, were applicable, the deadline would still be 30 days.

⁸ See 47 C.F.R. § 1.4(c) (the first day to be counted when a period of time begins with the occurrence of an event is the day after the event); see also 47 C.F.R. § 1.4(b)(5) (for documents not published in the Federal Register, released to the public, or referenced in a public notice, Commission action occurs on the date *appearing* on the document).

⁹ See AFR (date stamp).

¹⁰ See 47 C.F.R. § 1.7.

¹¹ See *The Consumer Law Group*, 28 FCC Rcd 684 ¶ 5 (2013) (dismissing application for review of a FOIA decision filed three days late); see also *Michael C. Olson*, 13 FCC Rcd 20593 ¶ 1 (1998) (dismissing application for review filed one day late); *Application of Board of Education of the City of Atlanta*, 11 FCC Rcd 7763, 7765-66 ¶ 6 (1996) (same).

¹² See *NetworkIP v. FCC*, 548 F.3d 116, 126 -27 (D.C. Cir. 2008) (citing *BDCPS Inc. v. FCC*, 351 F.3d 1177, 1184 (D.C. Cir. 2003) and *21st Century Telesis Joint Venture v. FCC*, 318 F.3d 192, 200 (D.C. Cir. 2003) as discouraging the Commission from entertaining late-filed pleadings “absent extremely unusual circumstances”); see also *CGG Veritas Land Inc.*, 26 FCC Rcd 2493, 2494 at n.13 (2011) (citing longstanding precedent that the Commission does not consider as unusual or compelling, waiver requests based on claims of delay caused by copy machines, delivery services “or even, in most cases, inclement weather or illness”); *Request for Review of the Decision of the Universal Service Administrator by St. Patrick School, White Lake, Michigan*, 17 FCC Rcd 13619, 13620 (Telecommunications Access Policy Div., Wireline Competition Bur. 2002) (filer’s prolonged medical problems do not constitute “good cause for purposes of waiving filing deadline).

¹³ See AFR at 1.

documented medical issue (which is not the case here), it would take a very strong showing to establish that a waiver was proper for a filing more than three months late. Given that Mr. Newton did not make such a showing, we dismiss Mr. Newton's filing as untimely.

5. ACCORDINGLY, IT IS ORDERED, that the Application for Review filed by Robert Newton IS DISMISSED. Mr. Newton may seek judicial review of this action pursuant to 5 U.S.C. §552(a)(4)(B).¹⁴

6. The following officials are responsible for this action: Acting Chairwoman Clyburn, Commissioners Rosenworcel and Pai.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁴ We note that as part of the Open Government Act of 2007, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect Mr. Newton's right to pursue litigation. Mr. Newton may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001
E-mail: ogis@nara.gov
Telephone: 301-837-1996
Facsimile: 301-837-0348
Toll-free: 1-877-684-6448