

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Completing the Transition to Electronic) WT Docket No. 19-212
Filing, Licenses and Authorizations, and)
Correspondence in the Wireless Services)

To: The Commission

COMMENTS

Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP (“Blooston”), on behalf of its wireless clients (the “Blooston Licensees”), respectfully submits, pursuant to Section 1.415 of the Commission’s Rules, the following comments in response to the Commission’s Notice of Proposed Rulemaking in the above-captioned proceeding concerning its proposal to (a) require electronic submission of all filings in the Universal Licensing System (“ULS”) and related systems (e.g., Antenna Structure Registration System (“ASR”), Tower Construction Notification System (“TCNS”) and Electronic Section 106 (“E-106”) System, (b) mandate that applicants provide email addresses on all Commission forms related to these systems in order to facilitate correspondence by the Commission and licensees/applicants via email rather than traditional US Postal Service (“USPS”) and (c) require electronic filing of pleadings and electronic service of pleadings on licensees and/or applicants. Blooston appreciates the Commission’s efforts to modernize its licensing systems, given the substantial technological changes over the past 20 years since the implementation of ULS. However, Blooston is concerned that reliance

on email as the sole means of correspondence between the Commission and applicants/licensees, the electronic service of pleadings, could lead to a loss of substantive rights due to the inherent unreliability of emails. Accordingly, while Blooston encourages the use of electronic means for courtesy communications, it submits that the Commission should continue the use of the USPS as the “Official” means of communications with licensees and applicants, and as the official means of serving pleadings and other documents.

Electronic Application Filings

The Commission has proposed requiring the electronic filing of all applications in both the ULS and ASR systems. Given the number of manual filings that were received last year (5,000 manual filings out of 425,000 ULS filings and 15 manual filings out of 7,000 ASR filings), Blooston believes that the Commission’s proposal is not unreasonable, provided that it is willing to liberally waive the electronic filing requirement in the event of electronic submission issues that occur from time to time. This is especially necessary for licensees in the Part 90 Private Radio Services, which were exempted from electronic filing when ULS was originally adopted. This is because while the Commission is correct that Internet access in one form or another is all but ubiquitous throughout the United States, broadband or high-speed internet access that is necessary for efficient access to the Commission’s filing systems is still elusive in many parts of the United States – especially in economically depressed, rural and extremely remote areas. As a result, it is not always possible to file applications in the ULS or ASR

systems when high speed Internet connections are not available – whether due to availability or end user cost.¹ Finally, there may be other reasons that could prevent electronic filing, such as power outages, and disabilities that make use of a computer impracticable. As such, the Commission should develop a regulatory scheme that facilitates ubiquitous electronic filing, but provides exceptions as necessary.

Official Correspondence by the Commission

In support of its proposal to require electronic correspondence with its applicants and licensees, the Commission has proposed that all applicants and licensees submit email addresses as a required data element on all applications for licenses and ASRs. The Commission has indicated that doing so would virtually eliminate the amount of mail and paper handled by the Commission. Blooston recognizes that doing so would create substantial cost savings, since the Commission would no longer have costs associated with the printing of correspondence and license documents (e.g., paper, toner, printing hardware, postage and personnel). While electronic communications would virtually eliminate those costs, the Commission must also recognize that reliance on electronic communications as the sole means for the communication of critically important information and deadlines is problematic. The reliability of electronic communications differs substantially from traditional correspondence that is transmitted via the USPS.

¹ The Commission can take official notice that its ULS system itself frequently runs slowly, which makes filings difficult even with high-speed broadband connections. One can only imagine the difficulties having to do so with older types of access services.

First and foremost, while electronic communications are generally instantaneous with minimal cost, it is not necessarily as reliable as use of the USPS or reliable commercial overnight express delivery services (e.g., UPS Next Day or Federal Express). Issues can arise due to factors involving technology and human factors (or a combination of both). Technical pitfalls of electronic communications include:

- non-receipt of emails due to technical issues with email servers and client programs (e.g., the sender shutting down the email client program by the sender prior to the email completing the sending process);
- emails being trapped in a spam folder or by the recipient's email service provider (such that the email never reaches the recipient's email spam folder, or a notification is sent days later by the email service provider);²
- other glitches with email servers or Internet Service Providers can cause email service outages, resulting in delay deliveries or worse, non-delivery of emails;
- the potential failure of email servers to automatically forward emails from a group email address to individual recipients – especially where the group email address uses a different domain from the individual email address

² In those cases where an email ends up in a local spam folder or is otherwise “black-listed” by an email service provider, there is no certainty that the sender will receive a bounce-back message. Quite frankly, this is also the case with legitimate “out of office” messages that are sometimes not transmitted or received.

that is to be forwarded to (e.g., from xyzgroup@sample.com to john.doe@test.com).

Human factors include:

- non-recognition of delivered email due to recipient being out of the office;
- the requirement that email addresses be entered letter perfect – resulting in the non-receipt of email due to typographical errors in email addresses;
- being unavailable or no longer being employed by the organization;
- emails not being detected in a timely manner due to the volume of emails received and/or falling into a spam filter.

Service via USPS or overnight commercial delivery service enhances the likelihood that official correspondence and/or service copies will be received at a designated location in a timely manner, without penalty for mailing days. And, if the intended recipient is unavailable for whatever reason, another person at that location should be able deal with the physical correspondence in accordance with Rule Section 1.5, which states that the Commission will rely on the address contained in the licensee’s most recent application for correspondence with the licensee, and that it is the licensee’s responsibility “for making sure any arrangements which may be necessary for his particular circumstances to assure that Commission documents or correspondence delivered to [its address on file with the Commission] will promptly reach him or some person authorized by him to act on his behalf.” Most businesses have a protocol for

dealing with the receipt of official mail when the recipient is traveling, ill or no longer with the company. If, however, official Commission correspondence and service copies are only email based, this will generally not be possible, since email accounts are password protected and best practices prohibit the sharing of passwords – making it difficult, if not impossible, for other personnel to timely respond to official correspondence or service copies.

In the auction context, the Commission regularly uses a commercial overnight delivery services for critical communications between the Commission and the prospective bidders, rather than relying solely on email or the mere release of public notices through the Daily Digest system. These overnight packages frequently contain copies of auction-related public notices that had been released that day and in some circumstances are duplicative of emails sent to the auction applicant's contact representative. This action clearly demonstrates that for critical communications, not even the Commission's staff is comfortable with sole reliance on electronic communications in order to ensure that appropriate auction deadlines are met. Rather, the Commission relies on a commercial overnight delivery service – which sometimes is even followed up with a telephone call from the staff depending upon the particular circumstances. While other licensing communications are perhaps not as sensitive as auction communications, it is respectfully submitted that a missed message due to one of the many email shortcomings discussed above could have very damaging consequences for the regulated entity, including the cancellation of a license, dismissal of an

application, or issuance of a fine for non-responsiveness. Therefore, use of USPS mailings in addition to email communications would still serve a valuable purpose.

Electronic Filing of Pleadings and Service on Licensees/Applicants

For the same reasons that the Commission does not require petitioners to obtain an FCC Registration Number (“FRN”) in order to filing a pleading in ULS of the Electronic Comment Filing System (“ECFS”), Blooston submits that requiring the electronic filing of pleadings could likewise create an unnecessary bar to the protection of public’s right to ensure that the Commission acts in the public interest. The ability of interested parties to file pleadings through the Secretary’s Office on paper, while perhaps inefficient from a paperless process standpoint, helps to ensure that potentially aggrieved parties are not disenfranchised from the ability to protect their rights or the public interest. Accordingly, the Commission should take steps to ensure that the process is inclusive rather than exclusive. Keeping the current process would do just that.

Moreover, Blooston is concerned that the Commission’s proposal to rely solely on electronic service of pleadings could have unintended adverse consequences for licensees and applicants, even where email addresses are kept up-to-date. For the reasons discussed above, Blooston submits that the Commission should retain its current processes for the official service of all pleadings and documents – with USPS being used for official service and email being used as a courtesy. Under the Commission’s Rules, pleading cycles are relatively quick and a missed service copy that was only sent via email could have the inadvertent consequence of prejudicing a party’s rights. Blooston

submits that service by USPS with a courtesy email would be the best practice for ensuring that all interested parties are properly served with any pleading or document in a proceeding. In this way, the Commission can ensure that the rights of all interested parties are protected.

Conclusion

For the forgoing reasons, the Commission is urged to continue the use of USPS as the “Official” means of communications, including reminders of license expirations and other deadlines, between the Commission and its licensees and applicants and that official service of pleadings and other documents should likewise be made via US Mail, postage pre-paid.

Respectfully submitted,

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