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Nashville, Tennessee  
12 February 2007

Federal Communications Commission  
Washington, D.C.

Subject: Petition for Reconsideration W.T. Docket Number 05-235

This is a Petition for Reconsideration in the matter of W.T. Docket Number 05-235. The concerns of this petition are strictly procedural, in that FCC is not considering all comments submitted on this NPRM.

During the thirty day comment period and the subsequent period for replies, FCC improperly deleted and suppressed comments received by the email system of FCC, ECFS. It is not in the public interest, convenience, or necessity for FCC to maintain a flawed and disruptive email server which mishandles citizen comments.

I submitted a properly formatted comment to the email system of FCC on Thursday 27 October 2005, shortly before the close of the comment period for NPRM Docket 05-235. Only much later did I discover that FCC had failed to post that comment. I communicated with Eric Hanson of FCC concerning the comment on both 15 and 16 November. He attempted to find the reason for the comment omission but was unable to do so. Email systems running on pc or Unix systems are notorious for poor audit capability. In my job as mainframe technical support for the State of Tennessee, I routinely review audit logs

for the SMTP (email) server giving date, time, source, and length of each email. Hanson should have easily found an audit record about my email. Reasons why he might not have found the audit record are discussed below. At the request of Hanson, I forwarded the comment to him by email on 16 November. After a series of phone calls, Hanson posted my comment. Hanson indicated that there were known problems with the ECFS of FCC, especially with respect to “spam” or unwanted trash email. Hanson said that my comment may have been wrongly marked as improperly formatted, but that a reply indicating such error should have been sent. This error message was not sent to me.

On 23 November 2005, I sent a reply comment on this NPRM, detailing my concerns with a flawed ECFS at FCC. This reply did not appear on the FCC system by 28 November so I contacted Hanson at FCC again. I told him that the reply was from a new email address and had a different “<Procedure>” heading, which he had previously suspected, but was still not accepted or posted by FCC. Hanson agreed to post my reply which I sent by email to him. He also advised me to use the web-based comment application at FCC, which I did. When he had not posted the reply by 5 December, I phoned him again. He posted the reply shortly thereafter.

Since both my comment and reply were eventually posted by FCC, was the NPRM process flawed? Yes, the NPRM process was flawed for four reasons. First, since both my comment and my reply were posted after the respective deadlines, there is no certainty of their proper consideration.

Second, since my comment was posted after the deadline, there was no opportunity for others to reply to the comment.

Third, since a lot of my time and energy were wasted in getting FCC to treat my comment correctly, my reply was necessarily restricted. In fact, my reply dealt only with the improper treatment of my comment by FCC, not with a substantive analysis of the other comments.

Fourth, as will be discussed later, it is quite likely that other comments were treated improperly.

My interaction with Hanson also resulted in phone calls with other FCC staff including both Bill Cline and his secretary Melissa. While Cline was abrupt, discourteous, and uncaring, Melissa was polite and quite helpful, as was Hanson.

The lengthy discussion above shows that the Electronic Comments Filing System of FCC has serious flaws. It appears that FCC is arbitrarily deleting and suppressing public comments. Hanson of FCC indicated that either a positive acceptance or negative rejection reply was sent by FCC ECFS for each comment received. I received neither on two different occasions.. He also indicated that a "spam" filter was in use and that "spam" messages received neither a positive or negative reply. FCC treated both my comment and my reply comment as "spam" or garbage. FCC appears to have done so on the basis of the originating email address. The address was W4NI at netscape.net on the comment and WA4ZZU at yahoo.com on the reply. Since both emails had FCC assigned calls in the source address, FCC appears to be treating

messages from FCC licensees as garbage. FCC is discriminating against radio amateurs of the United States.

This email deletion, an invalid marking as if it were "spam" garbage, may explain why Hanson of FCC could find no audit record of my comment. His inability to find indication of "spam" deletion is puzzling but may be indicative of the poor audit capability referenced above.

FCC received over three thousand comments on this NPRM. Because radio amateurs routinely put their callsigns in their email addresses, FCC may have received far more comments which it improperly deleted. Since ECFS auditing is also flawed, as seen above, the truth is lost.

FCC must fix the broken ECFS and must treat all comments properly. The inability of FCC, the foremost national communications authority, to properly configure an SMTP server is unacceptable, especially when it results in poor service to the citizens.

The requested and necessary remedy follows:

First remedy. Immediately halt and stay this published docket, W.T. 05-235

Second remedy. Fix the flawed ECFS and test it rigorously.

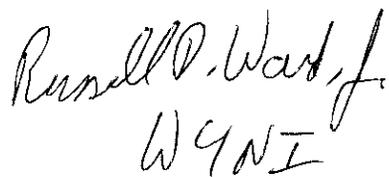
Third remedy. Re-open the proceeding to allow all comments.

Fourth remedy. Reconsider the NPRM after a valid comment period.

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Handwritten signature of Russell D. Ward, Jr. W4NI. The signature is written in cursive and includes the call sign W4NI below the name.