

Report of the Study Group on VSB Online Elections

May 2015

Preface

Following the first election held electronically by the Virginia State Bar in the fall of 2014, President Martingayle appointed a group of Council members to review that process, address concerns raised (including some by members of this group), and recommend changes and improvements going forward. The following report contains the findings and recommendations of the VSB Online Elections Study Group.

Although the amount of information collected and reviewed by the Study Group was voluminous, it is not assumed that its recommendations are exhaustive. The recommendations were made with an eye toward inclusion, cost, efficiency and fairness. The guiding principles of the group were that:

- every member of the Virginia State Bar who desires to participate and vote in an electronic election should have a reasonable opportunity to do so and receive a message that their vote has been received and counted;
- the VSB have a transparent and fair election process; and
- the VSB afford each President-elect candidate the opportunity to communicate their goals and positions to Bar members

Therefore the Study Group focused its recommendations on the parameters the VSB can and should have control over rather than those that are or should be outside the control of the State Bar. As examples: The VSB should have control of how the ballots go out, who sends them out and when. It should ensure the ballots are validated and that proper notice is given of elections and voting procedures. It should also ensure that casting a vote is straightforward and reasonably easy for its membership. It is also responsible for choosing a reliable party to collect the ballots and count the vote. We have sought to ensure that all candidates have a reasonable opportunity to have their positions shared with our members. The VSB staff and leadership must always remain cognizant of how much elections processes cost the Bar and its members.

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Where needed, the Study Group has proposed recommendations that it feels will improve our elections. The group understands that some of these recommendations will no doubt modestly increase the cost and the amount of work done by staff in future elections. On balance, the Study Group believes the recommendations balance costs vs. benefits.

Although the Group has made a number of recommendations to improve procedures within the Bar's control, it should be noted that there is one area where the Study Group was uncomfortable with the VSB having control. Outside of extremely narrow parameters, the members of the Study Group would be concerned with any attempt by the VSB to dictate to any candidate how he or she should run his or her campaign. For example, the State Bar cannot control the amount of time, energy and resources any candidate chooses to put into an election.

Likewise, the VSB has no control over a particular candidate's popularity or name recognition, or lack thereof. The VSB has no control over how hard a candidate is willing to campaign, how many phone calls they make or e-mails they wish to send, where they live, how many friends they have in the bar, how or if they wish to advertise, or how many law offices or local bar associations they choose to visit. The Study Group has heard a few suggestions that the Bar should control some of this, but believes this is not within the Bar's purview. However, the Study Group does believe all candidates should be treated equally by the Bar and given the same information. The rest is up to them.

Background

In the fall of 2014, the Virginia State Bar held its first electronic election, a contest for president-elect with three candidates: Raymond A. Benzinger, Thomas A. Edmonds and Michael W. Robinson. Michael Robinson won the election with 2,043 votes. The election ran between November 1 and December 1, with the results announced on December 2, 2014.

The candidates published position statements in *Virginia Lawyer* and attended local bar meetings to offer their positions. The VSB advertised the election before and during the election in *Virginia Lawyer*, the monthly E-news to members, and through eleven e-mails, including three from VSB President Kevin E. Martingayle.

Throughout the election, a VSB staff member was assigned to help members with the process.

Voter turnout was 14.49 percent of eligible voters (4,517). Eligible voters were active “in good standing” members as of October 1, 2014. Active members are lawyers admitted to practice law in Virginia who pay full dues and satisfy other membership obligations. As of October 1, 2014, there were 31,180 eligible voters. Survey & Ballot Systems (a leading online voting company) reports that the national average for participation in online voting is 12 percent. The average response rate for bar associations is 18.8 percent, with observed participation rates ranging from 6.27 percent to 28.12 percent.

Over time, contested elections to become President-elect of the Virginia State Bar have been relatively rare, so there is no continuous year-to-year trend line to study. In the last contested VSB election, conducted by paper ballot in 2012, turnout was 20 percent. Participation in elections has declined from a high of 34.8 percent in 1997.

The Study Group had a discussion with Senior Staff in the Policy Division of the ABA at the ABA who has handled contested elections for ABA positions in many states. She commented that the move to electronic voting always involves a learning curve for both the Bar and the voters. Because of the newness of the system and “bugs” which become apparent, the turnout is always lower right after the switch. After the system is refined and Bar members become used to electronic voting, the turnout goes up.

The cost of the 2014 electronic election was \$6,500. The cost of the 2012 paper ballot election was \$26,000. That cost would have been higher in 2014 due to increased costs of printing and a larger active membership.

The VSB’s Electronic Election Process

Nearly all official correspondence regarding the election came from the VSB. The notable exception was an e-mail from the vendor, Survey & Ballot Systems (SBS), with the link to the ballot and instructions. None of the VSB e-mails contained a direct link to the ballot or a portal through which the member could easily access the ballot.

Election procedures included the following:

- SBS mailed “special letters” to all members without an e-mail address and to all members whose accounts generated an e-mail bounce back (indicating the SBS e-mail was not received by the member). This letter contained the member’s unique credentials and voting instructions. It also included instructions for requesting a paper ballot. Roughly 1,500 ballot letters were mailed.
- Members who requested a paper ballot were mailed one from SBS. The paper ballots were to be completed and mailed back to SBS to be counted. From the roughly 1,500 ballot letters, twenty paper ballots were requested and mailed. Seventeen paper ballots were submitted to SBS (yielding a response rate of about 1.1 percent from the paper mailings).
- Members who contacted the VSB saying that they had not received a ballot from SBS received another e-mail from SBS.
- The VSB sent multiple reminder e-mails during the election. These were sent to all voters, because the VSB does not have access to refined lists that would filter out members who had already cast votes. For future elections, SBS could send a filtered reminder at an added cost, but those costs are very high. Each blast transmission would have an administrative cost of \$250, plus \$.25 for each e-mail. (As an illustration, a single filtered message to half of the eligible voters would cost \$4,147.50.)

Member Concerns Regarding the Online Election

Of those who voted and responded to a survey accompanying the electronic ballot, 95 percent reported they were “satisfied” or “very satisfied” with the process.

However, a few complaints were received by the VSB during the election:

- Some members did not get the original vendor e-mail from SBS. All got the “resend” e-mail, except one member who stated that he

didn't have time to deal with the situation and did not work to resolve it.

- The VSB found, upon research, that some members who complained about the online process were ineligible to vote, which is why they didn't get the e-mail.
- The unique five-digit numbers provided by SBS resembled the Bar's five-digit membership numbers and caused some confusion.
- The system was hard to use, according to one member.

The primary problem reported after the election was related to the transmission of the initial e-mail from SBS. The VSB had asked its members to "whitelist" or add SBS's e-mail as a safe sender to their e-mail accounts, so that the e-mail would not be identified as spam. But the SBS message was still filtered out of some lawyers' mailboxes, most likely because they did not take the advised cautionary measures.

Notably, the use of SBS to send the voting e-mail was by design. One of the goals of having a third party handle the election was to avoid any allegations of impropriety, and to ensure objectivity and neutrality in the process. This is common practice in such elections. Further comments about why the VSB should not send out the e-mail itself are in the Recommendations section at the end of this report. The VSB intentionally did not have each individual member's unique identifying ballot number, so it could not send the ballot/voting e-mail.

At the February 28, 2015, meeting of the VSB Council, members said there had been some problems with the election that should be studied and addressed.

Council member Joe Bowen spoke about an incident at a law firm where one partner used the firm's general e-mail address as his VSB address of record (the others in the firm did not). The e-mail addressed to that attorney went to all the lawyers in the firm and one partner inadvertently used the logon credentials to vote. When the attorney it was intended for tried to vote, he was blocked and told he had already voted. This demonstrated that, while the electronic distribution of ballots worked, the VSB should have names and VSB member numbers attached to the e-mail, which would have prevented the inadvertent mistaken vote. Very few firms operate in this fashion, but it brought an issue to the VSB's attention (see the Recommendations section).

Council member Ray Benzinger raised the issue of candidates sending out informational e-mails to members, and questioned whether all candidates received the same parameters from the VSB. VSB staff advised the Study Group that all three candidates made requests for e-mail addresses of members, and that those requests were fulfilled in identical fashion.

Mr. Benzinger also raised the issue of one candidate “piercing the anti-spam rules of a national e-mail service.” Apparently, two candidates tried to use the same e-mail transmission company to send e-mails to voters using the list given to them by the VSB. The vendor sent one candidate’s e-mail but failed to send one from the other candidate. The matter of interpreting the antispam policies of particular vendors and how they apply them is beyond the mission of this Study Group, as are the relationships and contracts between vendors and clients. None of these involve actions by the Virginia State Bar. However, the matter was taken seriously and explored by the Study Group.

The Study Group found that the VSB provided each of the candidates the requested e-mail addresses of its members with the understanding that they would be used for election-related e-mails. One candidate’s firm was a long standing customer of the particular vendor that sent his e-mail. The other candidate was a new account. At some point, the vendor stated that it was against its policies to send out such e-mails and that sending the one e-mail out had been a mistake on its part. This confusion is regrettable but not a result of VSB action. The Study Group has concluded that there was no violation of any rules related to the VSB. However, the Study Group does make two recommendations that will hopefully address communications issues like these going forward (see Recommendations Section).

Mr. Benzinger suggested that the timing of the election be moved to coincide with the mailing of annual dues, effectively moving back to a paper election. The VSB noted this would involve much more administrative work than a simple date change and potentially have new, unintended problems. Also, in light of the favorable response to the digital election, the Study Group believes that the recommendations made below will solve many of the problems encountered in our first foray into online elections.

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After the meeting, Council member and candidate Tom Edmonds raised the issue of the actual ballot (from SBS) going into spam filters. It is admittedly hard to completely control this problem. However, per the recommendations below, the VSB could add a link to the vendor on the VSB member site, thereby providing a nearly direct means of voting. This should remove the vast majority of issues. This method would only require that the member log-in on the VSB site. If a member has ever used the site before, this process is already set up. If not, it is a simple procedure for all members and explained on the VSB website. It could be explained again in VSB e-mails and articles.

The Creation of a VSB Study Group on Online Elections

Immediately following the February 28, 2015, VSB Council meeting, President Martingayle appointed a study group on VSB Online Elections. Its members are:

- Sharon Nelson, Chair
- Christy Kiely
- Tracy Giles
- Jay Myerson

The Study Group’s Methodology

The Study Group sought additional member input about the electronic election in several ways.

Presidential E-mail and Request for Feedback

At the request of the study group, VSB President Kevin Martingayle sent out the following e-mail to all active members of the VSB on March 9, 2015.

My Fellow Members of the Virginia State Bar,



At the Virginia State Bar Council meeting on February 28, some council members expressed concerns about the recent online VSB presidential election. In an effort to address concerns and ensure that future elections are both fair and cost-effective for the VSB, I appointed a study group consisting of VSB Council members Tracy Giles (Roanoke), Jay Myerson (Reston), Christy Kiely

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(Richmond) and immediate past president Sharon Nelson (Fairfax), who serves as chair.

This group has collected and is studying a lot of information provided by the VSB, but we need input from VSB members as well. We would greatly appreciate it if you would provide your comments and ideas to the study group, and if you would also respond to any of the following questions that are applicable to you:

1. Did you experience any problems with the election process? If so, please describe them.
2. Do you have any suggestions for improvement in the process?
3. If you did NOT vote, why not?

Please reply by forwarding this e-mail and your comments to Sharon Nelson at snelson@senseient.com as soon as possible, and no later than Tuesday, March 17.

I was pleased that 95 percent of those who filled out the survey that accompanied the ballot said they were satisfied or very satisfied with the process. But we welcome the opportunity to make improvements based on your suggestions.

I thank you in advance for your time in helping the VSB as it continues to refine its operations to meet the needs and expectations of the Supreme Court of Virginia and our membership.

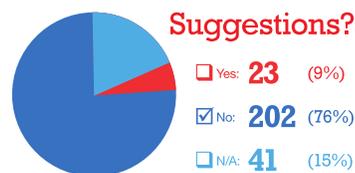
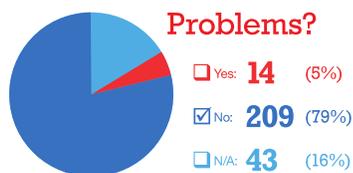
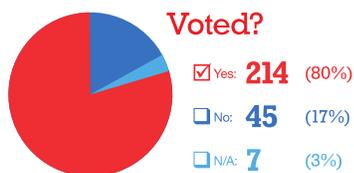
And as always, thank you for allowing me to serve as your president.



Kevin E. Martingayle
President, Virginia State Bar

Responses to the Presidential E-mail

Total No. of Responses: **266**



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The comments submitted were overwhelmingly positive and encouraged the future use of online elections. Most members were in favor of online elections because they are fast and far less expensive than paper ones.

Problems identified in responses to the survey questions:

- VSB e-mails didn't have a link to the ballot (mentioned by multiple people).
- There should be an e-mail receipt for voting (receipts were provided, but people did not recall receiving them, possibly deleting them as unnecessary and then forgetting them later).

Stated reasons for not voting were:

Didn't know candidates (many of these), didn't care, not engaged with Bar (multiples of these), retiring soon, live out of state though barred in Virginia (multiples of these), appeared cumbersome and I didn't have time, didn't get a ballot, found process difficult, couldn't get system to work without tech help and it was after-hours, multiple people didn't get the ballot e-mail (the spam filter was the likely cause and some acknowledged finding it there), get too much e-mail to keep up with it, didn't get around to it and acknowledged this to be her own fault, assumed it would be troublesome and didn't even try, didn't receive e-mails, family member was battling cancer and was preoccupied, election irrelevant to me, don't use a computer, retired, no longer practicing law, not interested.

Specific suggestions offered by members included:

- Have information on candidates on the VSB website (multiples of these)
- Filter list to send reminders only to those who have not voted (this is too expensive in the group's judgment)
- Ban unsolicited e-mail from candidates (contrary to the First Amendment, in the group's judgment)
- Have videos of candidates on a website (the committee did not consider this necessary)

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- If a firm shares e-mail, use the VSB user name and bar number (suggestion included in Recommendations)
- Have ballots come directly from the VSB, not the vendor where it might be determined to be spam or deleted for fear it is a phishing e-mail (unfortunately this is not feasible – an independent third party is needed)
- Have a paper ballot option (a half dozen members suggested either this or a full return to paper ballots)
- Describe the ease of voting at CLEs
- Encourage local bar associations to publicize the election and the ease of voting
- Login through MyMCLE account (unfortunately not possible – an independent third party is needed)
- Have an hour-long webcast where Bar members could ask questions of candidates

Telephone Surveys and In-person Questions

At the recommendation of Council member Tom Edmonds, we had the VSB randomly pull twenty VSB members from various circuits for us to personally call. We also reached out individually, by phone and in-person, to people in our firms and those we met at Bar settings. Among us, we estimate that we talked to more than fifty people in addition to the twenty people we called from the random names selected by the VSB. For those who voted, the process was quick and simple – they applauded the move to digital. For those who did not, the various explanations amounted to “apathy,” – not following the election, not knowing the candidates, or simply not wanting to take the time to vote.

Recommendations of the Study Group:

1. The use of a unique voting ID (instead of using the VSB member ID) caused confusion. This should be changed to use the VSB member number as the

voting ID, with the vendor creating only a unique password.

2. The member's name should also be on the e-mail from the vendor. Recommendations 1 and 2 should prevent the confusion that may be experienced by firms with a shared e-mail account.
3. The e-mails from the VSB did not link to the ballot or to anything else that would facilitate direct voting. We can and should host such a link on the Member portion of our site, for an estimated cost of about \$3,000. This seemed to be at the root of the majority of the election problems: members didn't get the vendor e-mail, and could not get to the ballot via the VSB's e-mails because they did not contain a link. This would mean that all VSB e-mails sent to members once the election is open could include a link to a place where they could vote, requiring only that they have a log-in to the Member portion of the VSB website. Setting up a Member log-in is simple, but we could reiterate and explain the process in our e-mails and articles about the election.
4. Some members have old e-mail addresses. This is a continuing problem. We can mail them ballots, or have staff call to get updated e-mail addresses. There is also a process for vendors to check "good addresses," which we may want to price and use. VSB staff could try to update the "bad addresses" provided from the vendor.
5. If/when members are mailed the voting information -- because they have no e-mail address on file or no working e-mail (i.e., bounce backs) -- that vendor mailing should include a paper ballot, rather than requiring the member to take the extra step of requesting a paper ballot from the vendor in order to vote. This may increase the response rate for paper ballots, which was noticeably lower in the recent election than the online response rate.
6. We should have a section of the Members' area of the website with photos and position statements (videos are not recommended for inclusion). An often heard remark in the member responses was a lack of information about the candidates.

7. The VSB should have our vendor send the original balloting e-mail on a Monday morning, so it will not arrive Friday-Sunday when many lawyers are not monitoring their e-mails.

8. The group recommends that the VSB continue to outsource the administration of the elections to a third-party vendor for the following reasons:
 - Cost: The VSB does not currently own software that would allow it to send the number of required individual e-mails to each member. It sends mass mailings, but not personalized e-mails to each member.
 - Additional work: One of the reasons the VSB outsourced this process was to lower the amount of internal hours spent managing the election. If it takes the login e-mail in-house, it would have to manage the e-mail process and send individual e-mails to each member, track bounce backs, and handle support calls related to passwords and logins. This involves a lot of time; outsourcing is more time-effective as well as cost-effective.
 - Access to the passwords: As part of outsourcing, the VSB does not have access to members' election passwords. There is a greater security risk if the passwords exist both with the VSB and SBS.
 - Impartiality: With the current setup, the VSB is hands-off on all processes, and therefore has placed the responsibility of security and confidentiality of votes with SBS. No one at the VSB has a way to access individual votes or logins. This ensures neutrality in the voting process.

9. Although it cannot be the VSB's responsibility to run candidates' campaigns, it should address, in a reasonable fashion, the concern that all candidates have the opportunity to be heard. The VSB should ensure that each candidate in a contested election for president-elect have an opportunity to communicate directly with VSB members/voters. The group recommends that each candidate be allowed to prepare a statement of no more than 1000 words that would then be e-mailed directly from the VSB to its membership. Recognizing that with so many members the e-mails may need to be sent out in batches, the statements of all candidates should be sent at the same time to the same recipients. It is preferable that the statements of all candidates be included in one e-mail rather separate e-

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mails for each candidate (which could result in over a hundred thousand separate e-mails in a three-way race). The content of candidate statements should be reviewed prior to sending for potential violations of VSB or state policy. If such a concern is noted, the candidate should be immediately notified of the specific violation, and given the option of either revising the message to be in compliance or allowing the VSB to perform limited editing for that purpose.

10. We should caution all candidates who wish to e-mail VSB members to be sure that they comply with the transmission provider's Terms of Service.

The study group asks that our recommendations be presented at the June Council meeting.

Respectfully submitted,

Sharon Nelson, Chair
Christy Kiely
Tracy Giles
Jay Myerson

Postscript: An initial draft of our report was complete and undergoing final review when we received a report from Survey & Ballot systems about the 2015 Council Elections. Three paper ballots were received. Internet participation stood at 1,814 voters. We had a participation rate of 13.55% for 13,386 eligible voters in that election.

Of those who participated, 79.9% said they were very satisfied with the election process, 16.7% said they were satisfied, 2.3% said they were neutral, .7% said they were dissatisfied and .3% said they were very dissatisfied.

These numbers reflect that the overwhelming majority of voters were pleased with the online Council Election process, and the comments reflected approval of the system's simplicity and ease. Two of the Study Group's recommendations (through our preliminary discussions with staff) were implemented. These included the use of the VSB member number as the ID, with the vendor creating

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only a unique password. Member names were also included on the e-mail to prevent confusion in a firm with a shared e-mail account.

VSB Response to Recommendations from Study Group on VSB Online Elections

May 2015

1. The use of a unique voting ID (instead of using the VSB member ID) caused confusion. This should be changed to use the VSB member number as the voting ID, with the vendor creating only a unique password.

RESPONSE: This procedure was implemented during the April 2015 Council election and will be utilized in future elections.

2. The member's name should also be on the e-mail from the vendor. Recommendations 1 and 2 should prevent the confusion that may be experienced by firms with a shared e-mail account.

RESPONSE: This procedure was implemented during the April 2015 Council election and will be utilized in future elections.

3. The e-mails from the VSB did not link to the ballot or to anything else that would facilitate direct voting. We can and should host such a link on the Member portion of our site, for an estimated cost of about \$3,000. This seemed to be at the root of the majority of the election problems: members didn't get the vendor e-mail, and could not get to the ballot via the VSB's e-mails because they did not contain a link. This would mean that all VSB e-mails sent to members once the election is open could include a link to a place where they could vote, requiring only that they have a log-in to the Member portion of the VSB website. Setting up a Member log-in is simple, but we could reiterate and explain the process in our e-mails and articles about the election.

RESPONSE: This procedure will be implemented during future elections.

4. Some members have old e-mail addresses. This is a continuing problem. We can mail them ballots, or have staff call to get updated e-mail addresses. There is also a process for vendors to check "good addresses," which we may want to price and use. VSB staff could try to update the "bad addresses" provided from the vendor.

RESPONSE: We will obtain prices from vendors to determine the cost of checking for "good addresses" as this recommendation suggests. If the cost is reasonable and can be covered by our current budget, this recommendation will be implemented.

5. If/when members are mailed the voting information -- because they have no e-mail address on file or no working e-mail (i.e., bounce backs) -- that vendor mailing should

include a paper ballot, rather than requiring the member to take the extra step of requesting a paper ballot from the vendor in order to vote. This may increase the response rate for paper ballots, which was noticeably lower in the recent election than the online response rate.

RESPONSE: This recommendation will be implemented, unless the vendor's charge for this service is unreasonably high.

6. We should have a section of the Members' area of the website with photos and position statements (videos are not recommended for inclusion). An often heard remark in the member responses was a lack of information about the candidates.

RESPONSE: This recommendation will be implemented.

7. The VSB should have our vendor send the original balloting e-mail on a Monday morning, so it will not arrive Friday-Sunday when many lawyers are not monitoring their e-mails.

RESPONSE: This recommendation will be implemented, unless the timing is otherwise required by the bylaws.

8. The group recommends that the VSB continue to outsource the administration of the elections to a third-party vendor for the following reasons:
 - o Cost: The VSB does not currently own software that would allow it to send the number of required individual e-mails to each member. It sends mass mailings, but not personalized e-mails to each member.
 - o Additional work: One of the reasons the VSB outsourced this process was to lower the amount of internal hours spent managing the election. If it takes the login e-mail in-house, it would have to manage the e-mail process and send individual e-mails to each member, track bounce backs, and handle support calls related to passwords and logins. This involves a lot of time; outsourcing is more time-effective as well as cost-effective.
 - o Access to the passwords: As part of outsourcing, the VSB does not have access to members' election passwords. There is a greater security risk if the passwords exist both with the VSB and SBS.
 - o Impartiality: With the current setup, the VSB is hands-off on all processes, and therefore has placed the responsibility of security and confidentiality of votes with SBS. No one at the VSB has a way to access individual votes or logins. This ensures neutrality in the voting process.

RESPONSE: The VSB agrees that it should continue to outsource the administration of elections to a third-party vendor for the reasons enumerated.

9. Although it cannot be the VSB's responsibility to run candidates' campaigns, it should address, in a reasonable fashion, the concern that all candidates have the opportunity to be heard. The VSB should ensure that each candidate in a contested election for president-elect have an opportunity to communicate directly with VSB members/voters. The group recommends that each candidate be allowed to prepare a statement of no more than 1000 words that would then be e-mailed directly from the VSB to its membership. Recognizing that with so many members the e-mails may need to be sent out in batches, the statements of all candidates should be sent at the same time to the same recipients. It is preferable that the statements of all candidates be included in one e-mail rather separate e-mails for each candidate (which could result in over a hundred thousand separate e-mails in a three-way race). The content of candidate statements should be reviewed prior to sending for potential violations of VSB or state policy. If such a concern is noted, the candidate should be immediately notified of the specific violation, and given the option of either revising the message to be in compliance or allowing the VSB to perform limited editing for that purpose.

RESPONSE: This recommendation will be implemented.

10. We should caution all candidates who wish to e-mail VSB members to be sure that they comply with the transmission provider's Terms of Service.

RESPONSE: This recommendation will be implemented.

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