

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

DOCKETING STATEMENT

Case Name: Puerto Rice Telephone Co. v. FCC et al.

Appeal No. (if available) : 18-9567 (MCP No. 155)

Court/Agency Appealing From: Federal Communications Commission ("FCC")

Court/Agency Docket No.: FCC 18-133 (WT Dkt. No. 17-79, WC Dkt. No. 17-84)

District Judge: NA

Party or Parties Filing Notice of Appeal/Petition: _____

Puerto Rice Telephone Company Inc., d/b/a Claro ("PRTC")

I. TIMELINESS OF APPEAL OR PETITION FOR REVIEW

A. APPEAL FROM DISTRICT COURT

1. Date notice of appeal filed: _____

a. Was a motion filed for an extension of time to file the notice of appeal? If so, give the filing date of the motion, the date of any order disposing of the motion, and the deadline for filing notice of appeal:

b. Is the United States or an officer or an agency of the United States a party to this appeal? _____

2. Authority fixing time limit for filing notice of appeal:

Fed. R. App. 4 (a)(1)(A) _____ Fed. R. App. 4(a)(6) _____

Fed. R. App. 4 (a)(1)(B) _____ Fed. R. App. 4(b)(1) _____

Fed. R. App. 4 (a)(2) _____ Fed. R. App. 4(b)(3) _____
Fed. R. App. 4 (a)(3) _____ Fed. R. App. 4(b)(4) _____
Fed. R. App. 4 (a)(4) _____ Fed. R. App. 4(c) _____
Fed. R. App. 4 (a)(5) _____
Other: _____

3. Date final judgment or order to be reviewed was **entered** on the district court docket: _____
4. Does the judgment or order to be reviewed dispose of **all** claims by and against **all** parties? *See* Fed. R. Civ. P. 54(b).

(If your answer to Question 4 above is no, please answer the following questions in this section.)

- a. If not, did district court direct entry of judgment in accordance with Fed. R. Civ. P. 54(b)? When was this done?

- b. If the judgment or order is not a final disposition, is it appealable under 28 U.S.C. ' 1292(a)? _____
- c. If none of the above applies, what is the **specific** statutory basis for determining that the judgment or order is appealable? _____
5. Tolling Motions. *See* Fed. R. App. P. 4(a)(4)(A); 4(b)(3)(A).
- a. Give the filing date of any motion that tolls the time to appeal pursuant to Fed. R. App. P. 4(a)(4)(A) or 4(b)(3)(A):

- b. Has an order been entered by the district court disposing of any such motion, and, if so, when? _____

6. Cross Appeals.
- a. If this is a cross appeal, what relief do you seek beyond preserving the judgment below? *See United Fire & Cas. Co. v. Boulder Plaza Residential, LLC*, 633 F.3d 951, 958 (10th

Cir. 2011)(addressing jurisdictional validity of conditional cross appeals).

- b. If you do not seek relief beyond an alternative basis for affirmance, what is the jurisdictional basis for your appeal? *See Breakthrough Mgt. Group, Inc. v. Chukchansi Gold Casino and Resort*, 629 F.3d 1173, 1196-98 and n. 18 (10th Cir. 2010)(discussing protective or conditional cross appeals).
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B. REVIEW OF AGENCY ORDER (To be completed only in connection with petitions for review or applications for enforcement filed directly with the court of appeals.)

1. Date petition for review was filed: 10/25/2018
2. Date of the order to be reviewed: 10/15/2018
3. Specify the statute or other authority granting the court of appeals jurisdiction to review the order: 47 U.S.C. § 402(a), 28 U.S.C. §§ 2342(1), 2344
4. Specify the time limit for filing the petition (cite specific statutory section or other authority): 60 days. See 28 U.S.C. § 2344; 47 C.F.R. § 1.4(b).

C. APPEAL OF TAX COURT DECISION

1. Date notice of appeal was filed: _____
(If notice was filed by mail, attach proof of postmark.)
2. Time limit for filing notice of appeal: _____
3. Date of entry of decision appealed: _____
4. Was a timely motion to vacate or revise a decision made under the Tax Court=s Rules of Practice, and if so, when? *See Fed. R. App. P. 13(a)* _____

II. LIST ALL RELATED OR PRIOR RELATED APPEALS IN THIS COURT WITH APPROPRIATE CITATION(S). If none, please so state.

Sprint Corporation, v. FCC, et al., No. 18-9563 (MCP No. 155) (10th Cir.)
Verizon Communications, v. FCC, et al., No. 18-9566 (MCP No. 155) (10th Cir.)
City of San Jose, et al. v. FCC et al., No. 18-9568 (MCP No. 155) (10th Cir.)
City of Seattle, et al. v. FCC, et al., No. 18-9571 (MCP No. 155) (10th Cir.)
City of Huntington Beach, et al. v. FCC, et al., No. 18-9572 (MCP No. 155) (10th Cir.)

III. GIVE A BRIEF DESCRIPTION OF THE NATURE OF THE UNDERLYING CASE AND RESULT BELOW.

This petition for review involves a final order of the Federal Communications Commission captioned *In re Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, WT Docket No. 17-79, WC Docket No. 17-84, FCC 18-133 (rel. Sept. 27, 2018) (“Order”). The Order was published in the Federal Register on October 15, 2018. *See* 83 Fed. Reg. 51867.

In the Order, the FCC issued guidance and adopted rules to streamline the wireless infrastructure siting review process in order to facilitate the deployment of wireless facilities, including fifth-generation or “5G” facilities. Despite substantial evidence in the record supporting the need for the FCC to adopt a “deemed granted” remedy when authorities subject applications for wireless infrastructure siting to unreasonable delays or effective prohibitions, the FCC declined to adopt such a remedy. PRTC, which participated in the proceeding below, is the largest provider of telecommunications services in Puerto Rico and must deploy wireless facilities. PRTC is aggrieved by the Order and possesses standing to challenge it.

IV. IDENTIFY TO THE BEST OF YOUR ABILITY AT THIS STAGE OF THE PROCEEDINGS, THE ISSUES TO BE RAISED IN THIS APPEAL.

PRTC seeks relief on the grounds that the FCC’s decision not to adopt a “deemed granted” remedy is (1) arbitrary, capricious, and an abuse of discretion within the meaning of the Administrative Procedure Act, 5 U.S.C. § 701 et seq.; (2) inconsistent with sections 253 and 332 of the Communications Act, 47 U.S.C. §§ 253, 332; and (3) otherwise contrary to law. Accordingly, PRTC respectfully requests that this Court remand the relevant portion of the Order to the FCC, without vacatur, and with instructions for the FCC to adopt a “deemed granted” remedy as soon as is practicable.

V. ADDITIONAL INFORMATION IN CRIMINAL APPEALS.

- A. Does this appeal involve review under 18 U.S.C. ' 3742(a) or (b) of the sentence imposed? _____
- B. If the answer to A (immediately above) is yes, does the defendant also challenge the judgment of conviction? _____
- C. Describe the sentence imposed. _____

- D. Was the sentence imposed after a plea of guilty? _____
- E. If the answer to D (immediately above) is yes, did the plea agreement include a waiver of appeal and/or collateral challenges? _____

- F. Is defendant on probation or at liberty pending appeal? _____
- G. If the defendant is incarcerated, what is the anticipated release date if the judgment of conviction is fully executed? _____

- H. Does this appeal involve the November 1, 2014 retroactive amendments to §§ 2D1.1 and 2D1.11 of the U.S. Sentencing Commission's Guidelines Manual, which reduced offense levels for certain drug trafficking offenses? _____

NOTE: In the event expedited review is requested and a motion to that effect is filed, the defendant shall consider whether a transcript of any portion of the trial court proceedings is necessary for the appeal. Necessary transcripts must be ordered by completing and delivering the transcript order form to the Clerk of the district court with a copy filed in the court of appeals.

VI. ATTORNEY FILING DOCKETING STATEMENT:

Name: Megan L. Broggi Telephone: 202.719.7000

Firm: Wiley Rein LLP

Email Address: mbrown@wileyrein.com

Address: 1776 K Street NW, Washington, DC 20006

A. PLEASE IDENTIFY ON WHOSE BEHALF THE DOCKETING STATEMENT IS FILED:

Appellant

Petitioner

Cross-Appellant

B. PLEASE IDENTIFY WHETHER THE FILING COUNSEL IS

Retained Attorney

Court-Appointed

Employed by a government entity

(please specify _____)

Employed by the Office of the Federal Public Defender.

/s Megan L. Brown November 12, 2018

Signature

Date

NOTE: A copy of the final judgment or order appealed from, any pertinent findings and conclusions, opinions, or orders, any tolling motion listed in Fed. R. App. P. 4(a)(4)(A) or 4(b)(3)(A) and the dispositive order(s), any motion for extension of time to file notice of appeal and the dispositive order **must be submitted with the Docketing Statement.**

The Docketing Statement must be filed with the Clerk via the court's Electronic Case Filing System (ECF). Instructions and information regarding ECF can be found on the court's website, www.ca10.uscourts.gov.

This Docketing Statement must be accompanied by proof of service.

The following Certificate of Service may be used.

CERTIFICATE OF DIGITAL SUBMISSION

In accordance with the Court's CM/ECF User Manual, I hereby certify that (1) all required privacy redactions have been made pursuant to Federal Rule of Appellate Procedure 25(a)(5) and Tenth Circuit Rule 25.5; (2) hard copies of this pleading that may be required to be submitted to the Court are exact copies of the ECF filing; and (3) this submission has been scanned for viruses with the most recent version of a commercial virus scanning program, Cylance PROTECT version 2.0.1490.27, last updated on September 13, 2018, and, according to the program, is free of viruses.

Respectfully Submitted,

/s/ Megan L. Brown

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Counsel for Petitioner

November 12, 2018

CERTIFICATE OF SERVICE

I, Megan L. Brown, hereby certify that on November 12, 2018, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Tenth Circuit by using the appellate CM/ECF system.

I further certify that all participants in the case are registered CM/ECF users, that their names and email addresses appear in the docket of this case, and that service will therefore be accomplished by the appellate CM/ECF system.

Respectfully Submitted,

/s/ Megan L. Brown

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November 12, 2018