

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

DOCKETING STATEMENT

Case Name: Verizon Communications, Inc. v. Federal Communications Commission
and the United States of America

Appeal No. (if available) : 18-9566 (MCP No. 155)

Court/Agency Appealing From: Federal Communications Commission

WT Docket No. 17-79;
WC Docket No. 17-84;
Court/Agency Docket No.: FCC 18-133 District Judge: _____

Party or Parties Filing Notice of Appeal/Petition: Verizon Communications, Inc.

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).

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: October 25, 2018

2. Date of the order to be reviewed: October 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(l) and 2344, and Rule 15(a) of the Federal Rules of Appellate Procedure

4. Specify the time limit for filing the petition (cite specific statutory section or other authority): _____

Within 60 days from the entry of the Final Order, 28 U.S.C. § 2344

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.

The Judicial Panel on Multidistrict Litigation has transferred and consolidated this petition with the following petitions for review: Puerto Rico Tel. Co., Inc. v. FCC, No. 18-2063 (1st Cir.); City of San Jose v. FCC, No. 18-72883 (9th Cir.); City of Seattle v. FCC, No. 18-72886 (9th Cir.); City of Huntington Beach v. FCC, No. 18-72893 (9th Cir.); Sprint Corp. v. FCC, No. 18-9563 (10th Cir.).

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

In the underlying Declaratory Ruling and Third Report and Order, FCC 18-133, 83 Fed. Reg. 51,867 (Oct. 15, 2018) (“Order”), the FCC considered state and local regulatory barriers to the wireless infrastructure siting review process, particularly the siting of next-generation infrastructure. The Order streamlined siting review to encourage the development of Small Wireless Facilities. In part, the Order adopted “shot clocks” for the siting application approval process, which are tailored to support the installation of these Small Wireless Facilities. The FCC declined to adopt a “deemed granted” remedy when siting authorities fail to act on siting applications within the shot clock windows.

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

The FCC’s refusal to implement a “deemed granted” remedy is arbitrary and capricious in violation of the Administrative Procedure Act, and is an abuse of the Commission’s discretion. It also violates other federal laws including, but not limited to, the Communications Act of 1934, the Commission’s own regulations, and the United States Constitution; and it is otherwise contrary to law.

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: Henry Weissmann Telephone: 213-683-9150

Firm: Munger, Tolles & Olson LLP

Email Address: Henry.Weissmann@MTO.com

Address: 350 South Grand Avenue, Suite 500, Los Angeles, CA 90071

PLEASE IDENTIFY ON WHOSE BEHALF THE DOCKETING STATEMENT IS FILED:

A. 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/ Henry Weissmann

Signature

November 14, 2018

Date

CERTIFICATE OF SERVICE

I, Henry Weissmann hereby certify that on November 14, 2018, I electronically filed the foregoing Docketing Statement using the court's CM/ECF system, which will send notification of such filing to the following:

Thomas M. Johnson
Richard K. Welch
Scott M. Noveck
Counsel
Federal Communications Commission
445 12th Street, SW, 8th Floor
Washington, D.C. 20554

Counsel for Respondents

Date: November 14, 2018

Respectfully Submitted,

/s/ Henry Weissmann
Henry Weissmann
Munger, Tolles & Olson, LLP
350 South Grand Avenue
Suite 500
Los Angeles, CA 90071
(213) 683-9150
Henry.Weissmann@MTO.com

CERTIFICATE OF DIGITAL SUBMISSION

In accordance with the court's CM/ECF User's Manual, I hereby certify that:

- 1) All required privacy redactions have been made per 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) The ECF submission has been scanned for viruses with the most recent version of a commercial virus-scanning program and, according to the program, is free of viruses.

Date: November 14, 2018

Respectfully Submitted,

/s/ Henry Weissmann

Henry Weissmann

Munger, Tolles & Olson, LLP

350 South Grand Avenue

Suite 500

Los Angeles, CA 90071

(213) 683-9150

Henry.Weissmann@MTO.com