
DOCKETING STATEMENT

The Voice on the Net Coalition, Inc. v. Federal Communications Commission and
Case Name: "the United States of America"

Appeal No. (if available) : Case Nos. 11-9595, 11-9900

Court/Agency Appeal From: Federal Communications Commission

Court/Agency Docket No.: FCC 11-161 District Judge: _____

Party or Parties filing Notice of Appeal/Petition: The Voice on the Net Coalition, 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 filed and **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 the order being appealed is not final, 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 under Fed. R. Civ. P. 50(b), 52(b), 59, 60, including any motion for reconsideration, and in a criminal appeal any motion for judgment of acquittal, for arrest of judgment or for new trial, filed in the district court:

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

6. Bankruptcy Appeals. (To be completed only in appeals from a judgment, order or decree of a district court in a bankruptcy case or from an order of the Bankruptcy Appellate Panel.)

Are there assets of the debtor subject to administration by a district or bankruptcy court? _____

Please state the approximate amount of such assets, if known.

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: 12/23/11
2. Date of the order to be reviewed: 11/29/11
3. Specify the statute or other authority granting the court of appeals jurisdiction to review the order: 28 U.S.C. 2344; 28 U.S.C. 2112(a)(3); Consolidation Order of the Judicial Panel on Multidistrict Litigation, FCC 11-1914, MCP No. 108 (Dec. 14, 2011)
4. Specify the time limit for filing the petition (cite specific statutory section or other authority): 60 days from date of entry of 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.

AT&T, Inc. v. FCC, et al., Case No. 11-9591; Cellular South, Inc. d/b/a C Spire Wireless v. FCC, et al., Case No. 11-9590; Choctaw Telephone Company v. FCC, et al., Case No. 11-9586; Core Communications, Inc. v. FCC, et al., Case No. 11-9587; Direct Communications Cedar Valley, LLC, et al. v. FCC, et al., Case No. 11-9581; Halo Wireless, Inc. v. FCC, et al., Case Nos. 11-9592, 11-9593; National Association of State Utility Consumer Advocates v. FCC, et al., Case No. 11-9588; National Telecommunications Cooperative Association v. FCC, et al., Case No. 11-9589; Pennsylvania Public Utility Commission v. FCC, et al., Case No. 11-9585; Public Utilities Commission of Ohio v. FCC, et al., Case No. 11-9596; Transcom Enhanced Services, Inc. v. FCC, et al., Case No. 11-9594; tw telecom inc. v. FCC, et al., Case No. 11-9597; Vermont Public Service Board v. FCC, et al., Case No. 12-9500

III. GIVE A BRIEF DESCRIPTION OF NATURE OF ACTION AND RESULT BELOW.

The VON Coalition seeks review of the portions of the Report and Order (Order) adopted October 27, 2011 by the Federal Communications Commission (FCC), released November 18, 2011 (FCC 11-161), that impose a “No Blocking” obligation on providers of interconnected Voice Over Internet Protocol (VoIP) and one-way VoIP services, Order ¶¶ 973-974.

IV. ISSUES RAISED ON APPEAL.

- (1) Whether the FCC failed to provide sufficient prior notice to affected entities that the No Blocking obligation was under consideration, in violation of the Administrative Procedure Act, 5 U.S.C. § 553(b).
- (2) Whether the FCC failed to articulate a rational explanation grounded in record evidence in adopting the No Blocking obligation, rendering its action arbitrary, capricious, and an abuse of discretion within the meaning of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A).
- (3) Whether the FCC exceeded its jurisdiction and authority under the Communications Act, as amended, 47 U.S.C. § 151 et seq. (Act) by imposing the No Blocking obligation on "information services" that are not subject to regulation under the Act.

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 question in A 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 question D 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? _____

NOTE: In the event expedited review is requested, 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 at the time of appeal by completing and delivering the transcript order form to the clerk of the district court when a notice of appeal is filed. Defendant/appellant must refrain from ordering any unnecessary transcript as this will delay the appeal. If the court orders this appeal expedited, it will set a schedule for preparation of necessary transcripts, for designation and preparation of the record on appeal, and for filing briefs. If issues other than sentencing are raised by this appeal, the court will decide whether bifurcation is desirable.

VI. INDICATE WHETHER ORAL ARGUMENT IS DESIRED IN THIS APPEAL. If so, please state why.

An oral argument is desired in this appeal to supplement and provide any necessary clarifications to the written submissions to the Court.

VII. ATTORNEY FILING DOCKETING STATEMENT:

Name: Donna N. Lampert Telephone: (202) 887-6230

Firm: Lampert, O'Connor & Johnston, P.C.

Email Address: lampert@lojlaw.com

Address: 1776 K Street, NW, Suite 700, Washington, DC 20006

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/ Donna N. Lampert

01/18/12

Signature

Date

Attorney at Law

NOTE: A copy of the court or agency docket sheet, the final judgment or order appealed from, any pertinent findings and conclusions, opinions, or orders, any motion filed under Fed. R. Civ. P. 50(b), 52(b), 59, or 60, including any motion for reconsideration, for judgment of acquittal, for arrest of judgment, or for new trial, and the dispositive order(s), any motion for extension of time to file notice of appeal and the dispositive order, and the notice of appeal or petition for review **must be submitted with the Docketing Statement**, except as otherwise provided in Section I of the instructions.

The Docketing Statement must be filed with the Clerk via the court's Electronic Case Filing System (ECF). Instructions and information regarding ECF may 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.

CERTIFICATION OF DIGITAL SUBMISSION AND ANTI-VIRUS SCAN

I hereby certify that I have scanned for viruses the Portable Document Format version of the attached document, which was submitted in this case through the Court's CM/ECF system. I scanned the document using Symantec Endpoint Protection version 11.0.6005.562 (definitions last updated Tuesday, January 17, 2012), and according to that program, the document was free of viruses. I further certify that no privacy redactions were required.

s/ Donna N. Lampert

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Counsel for the Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on January 18, 2012, I caused the foregoing Docketing Statement to be filed using the Court's CM/ECF system.

I further certify that the foregoing document was furnished through ECF electronic service to the parties in this case through a registered CM/ECF user. This document is available for viewing and downloading on the CM/ECF system.

s/ Donna N. Lampert

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