

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11-1014

September Term 2010

FCC-09-191

FCC-10-201

Filed On: April 4, 2011

Verizon,

Appellant

v.

Federal Communications Commission,

Appellee

11-1016

MetroPCS 700MHz, LLC, et al.,

Appellants

v.

Federal Communications Commission,

Appellee

BEFORE: Henderson, Tatel, and Kavanaugh, Circuit Judges

ORDER

Upon consideration of the motions to dismiss Nos. 11-1014 and 11-1016, the oppositions thereto, and the replies; the motions to defer filing the certified index, the oppositions thereto, and the replies; and the motion to consolidate, it is

ORDERED that the motions to dismiss be granted. The challenged order is a rulemaking document subject to publication in the Federal Register, and is not a licensing decision “with respect to specific parties.” 47 C.F.R. § 1.4(b)(1) and Note.

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The order will therefore be subject to judicial review upon publication in the Federal Register. Id. Regardless of whether the order is reviewable by way of a petition for review, 47 U.S.C. § 402(a), or a notice of appeal, 47 U.S.C. § 402(b), the prematurity is incurable. See Waterway Communications Systems, Inc. v. FCC, 851 F.2d 401, 405-06 (D.C. Cir. 1988) (notice of appeal under 47 U.S.C. § 402(b) and (c)); Western Union Telegraph Co. v. FCC, 773 F.2d 375, 378, 380 (D.C. Cir. 1985) (petition for review under 47 U.S.C. § 402(a) and Hobbs Act, 28 U.S.C. § 2344). It is

FURTHER ORDERED that the remaining motions be dismissed as moot.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam