



**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

RECEIVED

METROPCS COMMUNICATIONS,
INC.;
METROPCS 700 MHZ, LLC;
METROPCS AWS, LLC;
METROPCS CALIFORNIA, LLC;
METROPCS FLORIDA, LLC;
METROPCS GEORGIA, LLC;
METROPCS MASSACHUSETTS, LLC;
METROPCS MICHIGAN, INC.;
METROPCS NETWORKS
CALIFORNIA, LLC;
METROPCS NETWORKS FLORIDA,
LLC; and
METROPCS TEXAS, LLC;

Appellants,

v.

FEDERAL COMMUNICATIONS
COMMISSION and UNITED STATES
OF AMERICA,

Appellee.

11-1403

Case No. 11-_____

NOTICE OF APPEAL

Pursuant to 47 U.S.C. § 402(b) and (c), and Rule 15(a) of the Federal Rules of Appellate Procedure, MetroPCS Communications, Inc., MetroPCS 700 MHz, LLC, MetroPCS AWS, LLC, MetroPCS California, LLC, MetroPCS Florida, LLC,

MetroPCS Georgia, LLC, MetroPCS Massachusetts, LLC, MetroPCS Michigan, Inc., MetroPCS Networks California, LLC, MetroPCS Networks Florida, LLC, and MetroPCS Texas, LLC (collectively, “MetroPCS”) hereby give notice of their appeal of the order of the Federal Communications Commission (the “Commission”) captioned *In the Matter of Preserving the Open Internet; Broadband Industry Practices*, Report and Order, GN Docket No. 09-191, WC Docket No. 07-52 (rel. Dec. 23, 2010) (the “Order”).

This Court has exclusive jurisdiction over an appeal of a Commission order by “the holder of any ... station license which has been modified...by the Commission.” 47 U.S.C. § 402(b)(5); *Tribune Co. v. FCC*, 133 F.3d 61, 66 n.4 (D.C. Cir. 1998); *see also N. Am. Catholic Educ. Programming Found., Inc. v. FCC*, 437 F.3d 1206, 1208 (D.C. Cir. 2006). The Commission’s *Order* purports to modify and condition the Commission licenses of all wireless service providers, including those Commission licenses held by MetroPCS, by imposing certain requirements on mobile broadband Internet access services and providers, relying on its authority to “change the license...terms,” and “to impose new requirements on existing licenses beyond those that were in place at the time of grant.” *Order* ¶¶ 133 & 135 n.439; *see also id.* ¶ 134 (“The open Internet *conditions* we adopt today likewise are necessary to advance the public interest in innovation and investment.”) (emphasis added); *cf. Functional Music, Inc. v. FCC*, 274 F.2d 543,

547-48 (D.C. Cir. 1958) (holding that Commission rulemakings effecting license modifications are appealable under Section 402(b)(5)). MetroPCS actively participated in the proceeding that resulted in the *Order*, is a provider of wireless broadband Internet access services which will be subject to the requirements imposed in the *Order* when they become effective, and holds Commission licenses that purportedly are modified by the *Order* when effective. MetroPCS is thus directly aggrieved by the *Order* and has standing to challenge it.

An appeal under Section 402(b)(5) “shall be taken by filing a notice of appeal with the court within thirty days from the date upon which public notice is given of the date of the decision or order complained of.” 47 U.S.C. § 402(c). The public notice date for “all documents in notice and comment and non-notice and comment rulemaking proceedings required by the Administrative Procedure Act, 5 U.S.C. 552, 553, to be published in the Federal Register” is “the date of publication in the Federal Register.” 47 C.F.R. § 1.4(b)(1). In a prior ruling, this Court indicated that the *Order* “is a rulemaking document subject to publication in the Federal Register . . . [and is] therefore subject to judicial review upon publication in the Federal Register.” [D.C. Cir. Apr. 4, 2011 *Order* pp. 1-2]. The *Order* was published in the Federal Register on September 23, 2011, and MetroPCS’ Notice of Appeal is therefore timely filed.

MetroPCS seeks relief on the grounds that the *Order*: (1) exceeds the Commission's statutory authority; (2) is arbitrary, capricious, and an abuse of discretion within the meaning of the Administrative Procedure Act; (3) violates MetroPCS' constitutional rights; and (4) is otherwise contrary to law.

Thus, MetroPCS respectfully requests that this Court hold unlawful, vacate, enjoin, and set aside the *Order*, and provide such additional relief as may be appropriate.

Respectfully submitted,

MetroPCS Communications, Inc.
MetroPCS 700 MHz, LLC
MetroPCS AWS, LLC
MetroPCS California, LLC
MetroPCS Florida, LLC
MetroPCS Georgia, LLC
MetroPCS Massachusetts, LLC
MetroPCS Michigan, Inc.
MetroPCS Networks California, LLC
MetroPCS Networks Florida, LLC
MetroPCS Texas, LLC

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Its Attorneys

Dated: October 21, 2011

DISCLOSURE STATEMENT OF APPELLANT
METROPCS COMMUNICATIONS, INC. AND RELATED ENTITIES

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Circuit Rule 26.1, Appellant MetroPCS Communications, Inc. ("MetroPCS Communications"), hereby submits this Disclosure Statement in connection with its Notice of Appeal in the above captioned case. Each of the other Appellants is a wholly-owned, direct or indirect subsidiary of MetroPCS Communications.

MetroPCS Communications is a publicly traded company organized to provide wireless and data service to its customers. MetroPCS Communications has no parent corporation and no publicly-held company owns more than 10 percent of its stock.

Respectfully submitted:

**METROPCS COMMUNICATIONS,
INC.**

By: 

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Its Attorneys

CERTIFICATE OF SERVICE

I, Carl W. Northrop, hereby certify that on October 21, 2011, I caused to be served one copy of the foregoing "Notice of Appeal" and "Disclosure Statement of Appellant MetroPCS Communications, Inc." electronically and by first class mail, postage prepaid to:

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*Counsel for the Federal
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Respectfully submitted,

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