

# Net Neutrality Litigation Moves to Lottery

October 6, 2011

With the September 23rd publication of the Net Neutrality Order in the *Federal Register*, appeals of the order could finally be filed. As expected, multiple parties filed appeals in multiple districts, and the choice of circuit will now be decided by lottery under the Judicial Panel on Multijurisdiction Litigation rules. Verizon has again asserted that the case must be heard in the DC Circuit, but the FCC moved to dismiss that appeal, on substantially similar grounds as in January.

The next step is for the panel to announce which circuit is selected in the lottery. That decision is expected by the end of the week. If the pick is not the DC Circuit, Verizon is expected to move to transfer venue to the DC Circuit.

In all, [appeals were filed in the DC, 1st, 2nd, 3rd, 4th and 9th Circuits](#). Only the Verizon appeal in the DC Circuit argues that the rules are beyond the FCC's authority. The remaining appeals were filed by [proponents of net neutrality rules](#), who plan to challenge the FCC's decision to limit the applicability of the rules to wireless broadband services.

As it did previously, Verizon filed a [petition for review under Section 402\(b\)](#) (which must be heard in the DC Circuit), asserting that the rules modify its wireless licenses and thus is a licensing decision. [The Court dismissed a similar petition in April](#), and the FCC already has filed a [motion to dismiss](#) that 402(b) petition. (Verizon filed a [402\(a\) petition](#) as well).

MetroPCS, which filed a petition for review in January, did not file within the 10 day window for the lottery. It (and other parties) still may file petitions for review within the customary 60 day window.