

RCR Wireless News

Court won't expedite VZW's challenge to open access

By Jeffrey Silva

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The U.S. Court of Appeals for the District of Columbia Circuit rejected Verizon Wireless' emergency motion for fast-track treatment of its challenge to the Federal Communication Commission's open-access rule, increasing the likelihood that litigation will remain in play in the lead up to the Jan. 16 start of the 700 MHz auction.

Judges David Tatel, Merrick Garland and Brett Kavanaugh without comment denied the No. 2 mobile-phone carrier's request for expedited consideration of its appeal of the open-access condition imposed on a third of the 700 MHz spectrum by the FCC. Verizon Wireless had argued it was imperative that judicial review of the issue be completed before the auction begins.

The FCC and Frontline Wireless L.L.C. opposed Verizon Wireless' emergency motion, with the commission acknowledging more 700 MHz suits may be forthcoming and should be addressed as a package rather than in piecemeal fashion by the court. Additional suits could reach the court after the FCC acts on petitions for reconsideration of 700 MHz rules.

On a related front, FCC Chairman Kevin Martin broke his silence on his failed attempt to revise 700 MHz open-access language after Verizon Wireless and Media Access Project officials separately met with Martin and his staff on Sept. 17 on the issue. Verizon Wireless executives voiced objections to the 700 MHz open-access requirement, while the public interest group outlined its understanding of the rule's reach and limitations later the same day.

Martin earlier this week said he was merely trying to clarify the open-access rule—before the agency reviews and rules on regulatory challenges to the 700 MHz decision—to reflect the views of the Media Access Project.

“We did not ask for any kind of clarification,” Harold Feld, senior VP of the Media Access Project, told RCR Wireless News.

Today, a group that includes Media Access Project submitted a lobbying disclosure filing to the FCC underscoring Feld's statement.

The Public Interest Spectrum Coalition, whose representatives met with Martin and his staff yesterday, stated they told FCC officials “they believed that, as a general matter, no clarification of the [700 MHz] order was necessary, and that specifically, the order was clear on the obligations of the network providers with regards to devices and applications. Further, efforts to clarify the order in response to hypothetical concerns could have unintended consequences, such as the creation of ‘safe harbors’ for discriminatory conduct.”

Public interest groups and some companies eying the 700 MHz auction feared Martin's move was a response to Verizon Wireless lobbying. Sources said objections raised by Democratic Commissioners Michael Copps and Jonathan Adelstein forced Martin to abort his effort to revise open-access language in 700 MHz rules.

It now appears doubtful Martin will pursue any further changes to open-access language in the 700 MHz rules before the FCC rules on petitions for reconsideration.

"I don't think that in any way I'm moving away from the open-access requirement that prohibits the network operator from discriminating against content or applications," Martin told reporters.

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