

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

January 10, 2019

Elisabeth A. Shumaker
Clerk of Court

THE CITY OF SAN JOSE,
CALIFORNIA, et al.,

Petitioners,

and

CITY OF NEW YORK,

Intervenor - Petitioner,

v.

FEDERAL COMMUNICATIONS
COMMISSION, et al.,

Respondents,

CTIA-THE WIRELESS ASSOCIATION,
et al.,

Intervenors - Respondents.

No. 18-9568
(FCC No. FCC 18-133)
(Federal Communications Commission)

CITY OF SEATTLE, WASHINGTON,
et al.,

Petitioners,

and

CITY OF BAKERSFIELD,
CALIFORNIA, et al.,

Intervenors - Petitioners,

v.

FEDERAL COMMUNICATIONS
COMMISSION, et al.,

Respondents.

CITY OF HUNTINGTON BEACH,

Petitioner,

and

THE CITY OF SAN JOSE,
CALIFORNIA, et al.,

Intervenors - Petitioners,

v.

FEDERAL COMMUNICATIONS
COMMISSION, et al.,

Respondents.

No. 18-9571
(FCC No. FCC 18-133)
(Federal Communications Commission)

No. 18-9572
(FCC No. FCC 18-133)
(Federal Communications Commission)

ORDER

Before **McHUGH** and **MORITZ**, Circuit Judges.

Petitioners are local governments and other entities with similar interests who seek a stay of an FCC order that is scheduled to take effect in part on Monday, January 14, 2019. The Supreme Court has explained that “[a] stay is not a matter of right, even if irreparable injury might otherwise result. It is instead an exercise of judicial discretion, and [t]he propriety of its issue is dependent upon the circumstances of the particular

case.” *Nken v. Holder*, 556 U.S. 418, 433 (2009) (internal quotation marks and citation omitted). “The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion.” *Id.* at 433-34.

When deciding whether to exercise our discretion to grant a stay, we consider the following four traditional stay factors:

(1) whether the stay applicant has made a strong showing that [it] is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

Id. at 434 (internal quotation marks omitted).

The Supreme Court has indicated that “[t]he first two factors of the traditional standard are the most critical.” *Id.* After reviewing all of the parties’ submissions, we conclude petitioners have failed to meet their burden of showing irreparable harm if a stay is not granted. Accordingly, in the exercise of our discretion, we deny petitioners’ motion for stay.

Entered for the Court



ELISABETH A. SHUMAKER, Clerk