

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