

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20-1327

September Term, 2020

FCC-DA 20-802

Filed On: September 14, 2020

In re: ACA Connects - America's
Communications Association,

Petitioner

Discovery, Inc., et al.,
Intervenors

BEFORE: Tatel, Katsas, and Rao, Circuit Judges

ORDER

Upon consideration of the emergency petition for a writ of mandamus, the responses thereto, and the reply, it is

ORDERED that the petition for a writ of mandamus be denied. The All Writs Act provides that federal courts “may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.” 28 U.S.C. § 1651(a). A stay may be granted under the All Writs Act if the statutorily prescribed remedy is “clearly inadequate,” *In re GTE Service Corp.*, 762 F.2d 1024, 1027 (D.C. Cir. 1985), and the petitioner meets the “well established requirements that [this court] routinely appl[ies] to motions for stay pending appeal,” *Reynolds Metals Co. v. FERC*, 777 F.2d 760, 762 (D.C. Cir. 1985). Petitioner has not satisfied these stringent requirements. *See Nken v. Holder*, 556 U.S. 418, 434 (2009). Petitioner has not demonstrated a likelihood of success on the merits: the court is not persuaded by petitioner’s arguments that the Wireless Telecommunications Bureau (“the Bureau”) was required by regulation to include certain costs for purchasing decoders when determining a lump sum amount, *see Way of Life Television Network, Inc. v. FCC*, 593 F.2d 1356, 1359 (D.C. Cir. 1979), or that the process the Bureau used to ultimately determine that lump sum amount was arbitrary and capricious, *see All Am. Tel. Co., Inc. v. FCC*, 867 F.3d 81, 89 (D.C. Cir. 2017). And to the extent that petitioner has alleged a cognizable harm, petitioner has demonstrated neither that such harm is actual and imminent, *see Mexichem Specialty Resins, Inc. v. EPA*, 787 F.3d 544, 555 (D.C. Cir. 2015), nor that the harm could not be remediated were petitioner to ultimately prevail on its challenge to the underlying agency order, *see Verizon Tel. Cos. v. FCC*, 269 F.3d 1098, 1111 (D.C. Cir. 2001); FCC Resp. at 28 (“If the FCC denies ACA’s application for review and declines to increase the lump sum amount for MVPDs, the

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release would not prevent ACA or any other aggrieved party—including MVPDs that elect the lump sum reimbursement—from seeking judicial review of the Commission’s decision under the APA; nor would it preclude this Court from overturning the Commission’s lump sum determination.”).

Pursuant to D.C. Cir. Rule 36, this disposition will not be published.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY: /s/

Manuel J. Castro

Deputy Clerk