

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24-1004**September Term, 2023****FCC-23-112****Filed On:** March 12, 2024

Radio Communications Corporation,

Petitioner

v.

Federal Communications Commission and
United States of America,

Respondents

BEFORE: Millett, Pillard, and Wilkins, Circuit Judges

ORDER

Upon consideration of the emergency motion to stay, to expedite case, and for summary reversal, which is construed as seeking a summary grant of the petition for review; the opposition thereto; and the reply, it is

ORDERED that the request for a summary grant of the petition for review be denied. The merits of the parties' positions are not so clear as to warrant summary action. See *Cascade Broadcasting Group, Ltd. v. FCC*, 822 F.2d 1172, 1174 (D.C. Cir. 1987) (per curiam). Petitioner challenges a Report and Order issued by the Federal Communications Commission ("FCC" or "the Commission") implementing the Low Power Protection Act ("LPPA"), Pub. L. 117-344, 136 Stat. 6193 (2023). Petitioner argues that the LPPA provides for Class A licensing regardless of the size of a low power television station's Designated Market Area, and that the FCC's decision to use Designated Market Areas determined by Nielsen Media Research is unlawful. However, the LPPA states that the FCC may approve a Class A license application submitted by a low power television station that "operates in a Designated Market Area with not more than 95,000 television households," and that the term "Designated Market Area" means "a Designated Market Area determined by Nielsen Media Research or any successor entity" or "a Designated Market Area under a system . . . that the Commission determines is equivalent to the system established by Nielsen Media Research." See LPPA § 2(a)(2), (c)(2)(B)(iii). Given this statutory language, petitioner has not shown entitlement to a summary grant of its petition. It is

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FURTHER ORDERED that the request for a stay be denied. Petitioner has not satisfied the stringent requirements for a stay pending court review. See Nken v. Holder, 556 U.S. 418, 434 (2009); D.C. Circuit Handbook of Practice and Internal Procedures 33 (2021). Petitioner did not move first before the FCC for a stay pending review before filing a motion for a stay in this court, and petitioner has not shown that “moving first before the agency would be impracticable.” Fed. R. App. P. 18(a). In any event, petitioner has not shown that it will suffer irreparable harm absent a stay. The one-year window in which to file a Class A license application has not yet opened, and the FCC represents that petitioner may seek permission to file a provisional application while this litigation remains pending. It is

FURTHER ORDERED that the request for expedition be denied. For the reasons stated above, petitioner has not shown that it will be irreparably harmed in the absence of expedited review.

Because the court has determined that summary disposition is not in order, the Clerk is directed to enter a briefing schedule and to calendar this case for presentation to a merits panel.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY: /s/

Selena R. Gancasz

Deputy Clerk