

July 29, 2010

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

SORENSEN COMMUNICATIONS,
INC.,

Petitioner,

v.

No. 10-9536

FEDERAL COMMUNICATIONS
COMMISSION, et al.,

Respondents.

ORDER

Before **LUCERO** and **MURPHY**, Circuit Judges.

Petitioner Sorenson Communications, Inc. requests a stay pending this court's review of a June 28, 2010, Order of the Federal Communications Commission, which, inter alia, establishes new per-minute compensation rates from the Interstate Telecommunications Relay Services Fund for Video Relay Service for the 2010–2011 Fund year. Our consideration of a stay motion is governed by the following factors: “(1) whether the stay applicant has made a strong showing that he 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.” *Nken v. Holder*, 129 S. Ct. 1749, 1756 (2009) (internal quotation marks omitted). Having considered these factors, we conclude a stay is not warranted.

Although Sorenson has made a compelling argument that it will suffer significant economic harm absent a stay, the Court reiterated in *Nken* 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 the propriety of its issue is dependent upon the circumstances of the particular case.” *Id.* at 1760 (internal quotation marks and citation omitted). Sorenson has failed to convince us that it is likely to succeed on the merits of its petition and that the public is best served by issuance of a stay. Its motion for a stay is therefore DENIED. Both parties’ motions to seal are GRANTED. Movant Citizens Against Government Waste’s motion to become *amicus curiae* is DENIED as moot.

Entered for the Court,



ELISABETH A. SHUMAKER, Clerk