Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of )
Expanding Flexible Use of the 3.7 to 4.2 GHz ) GN Docket No. 18-122
Band )

OPPOSITION OF CTIA TO REQUEST FOR STAY

Thomas C. Power
Senior Vice President and General Counsel

Scott K. Bergmann
Senior Vice President, Regulatory Affairs

Kara Graves
Assistant Vice President, Regulatory Affairs

Jennifer L. Oberhausen
Director, Regulatory Affairs

CTIA
1400 16th Street, NW
Suite 600
Washington, D.C. 20036
(202) 736-3200

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CTIA hereby opposes the request filed by ACA Connects—America’s Communications Association (“ACA”)\(^1\) to stay the August 31, 2020 deadline for earth station operators to elect to receive a lump-sum payment to transition out of the 3.7-4.0 GHz band. ACA seeks a stay of the election date pending resolution of its application for review of the Final Cost Category Notice\(^2\) setting the lump sum amount and any ensuing judicial review, or in the alternative, ACA requests a 14-day stay of the deadline to allow time to seek a stay from the court of appeals.\(^3\) For the reasons set forth below, the Commission should promptly deny ACA’s request for stay.

I. INTRODUCTION AND SUMMARY.

The C-band spectrum presents the most immediate and critical opportunity for the Commission to make mid-band spectrum available to help propel 5G deployment and reap the resulting benefits to innovation, enhanced consumer welfare, and economic growth in the United States.

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\(^3\) See Stay Req. at 1.
States. Under Chairman Pai’s leadership, the Commission adopted the *C-Band Order* to repurpose 300 megahertz of currently underutilized C-band spectrum for flexible terrestrial use, correctly finding that an “important part of advancing U.S. leadership in next generation 5G networks is making additional mid-band spectrum available for 5G services.”

Recognizing the enormous opportunities presented by quickly putting C-band spectrum to more intense use to support 5G, the Commission scheduled the auction of the 3.7-3.98 GHz band to begin on December 8, 2020 and put in motion “a robust transition schedule to ensure that a significant amount of spectrum is made available quickly for upcoming 5G deployments.”

Incumbent satellite and earth station operators will need to work quickly to meet the accelerated relocation deadlines for clearing the lower 300 megahertz of C-band spectrum, portions of which must be cleared as early as December 2021.

The Commission granted incumbent C-band earth station operators, like ACA’s members, among others, a choice in relocating out of the 3.7-4.0 GHz band: obtain reimbursement for reasonable, documented relocation expenses to repack into the 4.0-4.2 GHz band, or elect a lump-sum payment based on the average projected relocation costs to allow, for example, a transition to fiber. But the Commission imposed a firm deadline for earth station operators to make that choice: 30 days after the lump sum payment is set. Stakeholders need to know whether earth stations will transition out of the 3.7-4.0 GHz band as part of the satellite operator-driven transition or on their own, and whether they will relocate to 4.0-4.2 GHz or

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5 *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, Report and Order and Order of Proposed Modification, 35 FCC Rcd 2343, ¶ 3 (2020) (“*C-Band Order*” or “*Order*”).

6 *Id.* at 2345 ¶ 4.

7 *Id.* at 2428 ¶ 203.
transition out of the band entirely. That choice will directly affect all satellite operators’
transition plans, as well as the timing and amount of relocation costs that new flexible use
licensees will pay. In accordance with the Order, the Wireless Telecommunications Bureau
(“Bureau”) released the Final Cost Category Notice on July 30 announcing the lump sum
amount, and setting the deadline for earth station operators to elect to receive the lump sum and
notify the Commission of their planned transition as August 31.

Rapidly transitioning C-band spectrum offers enormous public interest benefits. ACA’s
request to stay the lump sum election deadline threatens to derail the tightly scheduled transition
process, delay accelerated 5G access to the C-band, and create uncertainty for the upcoming
auction. Yet ACA’s sole reason for throwing this monkey wrench into the C-band transition
schedule is to add more money to the lump-sum payment available to its members. ACA’s goal
is to maximize the amount of funds available to its members, which they could use to transition
to fiber or simply to profit from their election by transitioning to the 4.0-4.2 GHz band
themselves for less than the lump sum payment. While ACA’s goal might advance the interests
of its members, it ignores the fact that they have multiple available options, including the option
to be made whole for their actual, reasonable costs to transition to the 4.0-4.2 GHz band.

Moreover, the Commission never assured earth station operators that they would receive
a specific amount of money to fund a move to fiber. In fact, the Commission expressly noted
that the lump-sum payment would equate to the average cost to relocate to the 4.0-4.2 GHz
band, and that the amount was not intended to compensate an operator’s switch to fiber and
would not necessarily do so. More fundamentally, ACA’s request would disrupt the
Commission’s carefully sequenced transition process by indefinitely upending the critical
transition work of satellite operators and earth station operators transitioning to 4.0-4.2 GHz.
Such a delay would be problematic because of the uncertainty that it would inject into the upcoming auction. And it would be antithetical to the public interest mandate to convert 3.7-3.98 GHz to productive use as rapidly as possible to meet the nation’s urgent need for mid-band spectrum for 5G.

In any event, none of ACA’s arguments provides any basis for revisiting the Order’s conclusions—much less granting the “extraordinary remedy” of a stay.8

First, ACA has not demonstrated that it is likely to succeed on the merits of its claim that the lump sum amount should include not only the costs of installing compression equipment, known as integrated receivers/decoders (“IRDs”), but also purchasing IRDs, and thus should be increased to include IRD purchase costs. After thoroughly evaluating an extensive record on the issue of IRDs, the Bureau correctly implemented the Order’s direction. The Bureau considered and cogently explained the deficiencies of each argument ACA makes as to why IRD purchase costs should be included. ACA fails to show that the Bureau committed error.

Second, ACA fails to meet the “high standard” for establishing irreparable injury absent a stay.9 At root, its claim is that if its members elect to take the lump sum—a choice that is entirely voluntary on their part—they should be paid more than the lump sum amount the Bureau determined was appropriate. Even if that claim were correct, it would be a purely economic loss, which does not constitute irreparable harm.10

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8 Winter v. NRDC, 555 U.S. 7, 22 (2008); see also Washington Metro. Transit Comm’n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977); Expanding Flexible Use of the 3.7 to 4.2 GHz Band, Order Denying Stay Petition, 35 FCC Rcd 5807, 5810 ¶ 4 (WTB 2020) (“ABS Stay Denial Order”) (“Petitioners have failed to make the required showing for this extraordinary equitable relief.”).


10 Id., 454 F.3d at 297.
Third, ACA ignores the harm that a stay would cause to CTIA members and other prospective bidders, who are investing significant time and resources to prepare for the December 8, 2020 auction, as well as to satellite operators who have committed to meet the Commission’s accelerated relocation schedule. The efforts of many stakeholders will be disrupted if they do not know which earth stations will be part of the satellite-driven relocation process and which elect to relocate on their own. This disruption, in turn, may inject uncertainty into prospective bidders’ plans at auction. ACA offers no legitimate basis to cause these disruptions.

Fourth, by complicating and delaying the transition schedule and the efforts of many stakeholders committed to a successful C-band clearing, a stay would disserve the clear public interest in rapidly putting C-band spectrum to new use. As the Commission noted, “stakeholders have repeatedly emphasized the need to make C-band spectrum available for flexible use as quickly as possible, with the goal of conducting an auction of overlay licenses in the 3.7-3.98 GHz band by the end of 2020.” \footnote{Order, 35 FCC Rcd at 2356 ¶ 28 (emphasis added) (footnote omitted).} Suspending the lump sum process for what could be many months—and well past the December 2020 start of the auction—would inject uncertainty into the auction and the transition and could derail both, undermining the Commission’s laudable efforts to galvanize U.S. leadership in the global race to 5G.

The Commission should quickly deny ACA’s request for stay.

II. ACA HAS NOT SATISFIED THE REQUIREMENTS FOR A STAY.

The Commission applies a stringent four-prong test when determining whether to grant a stay of one of its orders: “(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.”

ACA fails to satisfy any of the four factors.

A. ACA Has Not Demonstrated Likelihood of Success on the Merits.

ACA fails to demonstrate that the Bureau’s careful determination of the lump sum amount is incorrect. The Final Cost Category Notice realized the Commission’s goal of instituting a smooth relocation process, and it correctly rejected ACA’s primary argument that the plain language of the Order required that IRD purchase costs (and not only installation costs) be included in the lump sum payment.

The Bureau rightly concluded that allocating IRD equipment purchase costs to satellite operators is “more faithful to its goal of avoiding the disruption of service for FSS operations in the C-band.” The Bureau determined, based on a voluminous record of dozens of filings by stakeholders, that “satellite operators, together with programmers, must be able to elect and purchase compression equipment uniformly and on a nationwide basis—and to coordinate the technology upgrade process—to accomplish a successful transition.” That record demonstrated that treating IRD equipment purchase costs as part of the satellite transition process would best achieve the Order’s objectives for a rapid transition of C-band spectrum.

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13 Final Cost Category Notice ¶ 21 (footnote omitted).

14 Id. ¶ 18 (footnote omitted).

15 See, e.g., Letter from Jennifer L. Oberhausen, CTIA, to Marlene H. Dortch, FCC, GN Docket No. 18-122 (filed July 9, 2020) ("[A] decentralized, MVPD-driven approach could delay or upend elements of the transition."); Letter from Michael P. Goggin, AT&T, to Marlene H. Dortch, FCC, GN Docket No. 18-122 (filed July 7, 2020) ("[A]llocation of all IRD and Technology Upgrade costs to MVPDs threatens the Transition timeline."); Letter from Matthew S. DelNero, Counsel to the Content Companies and the National Association of Broadcasters, to Marlene H. Dortch, FCC, GN Docket No. 18-122 (filed July 6,
“the most efficient approach to assure a smooth transition is to assign satellite operators, in cooperation with programmers, responsibility for selecting and purchasing these upgrades as part of the satellite operators’ transition.”

Under the Order, this meant that those equipment costs would not be considered as “earth station costs,” and thus would not be included in calculating the lump-sum payment. ACA disagrees with the Bureau’s factual findings on the purchase of IRD equipment, but does not establish that the Bureau’s decision was incorrect; to the contrary, the Bureau’s determination was squarely grounded in the record, and is well within the authority the Commission granted it to develop and implement the lump sum payment process.

ACA is wrong in claiming that the Bureau violated the Order because the Commission treated IRD equipment purchase costs, as well as installation costs, as earth station costs that should accordingly be considered in determining the lump sum amount. As the Bureau notes, the Order stated that earth station migration costs may “require the installation of new equipment or software’ at earth station locations ‘for customers identified for technology upgrades necessary to facilitate the repacks, such as compression technology or modulation.’” But the Order does not mandate that the costs of purchasing such equipment or software is an earth station migration cost. Had the Commission intended to allocate those costs as earth station costs, it could have said so. The Bureau’s determination to count only IRD equipment

16 Final Cost Category Notice ¶ 20 and n.79 (citing numerous comments documenting that allocating IRD equipment purchase costs as an earth station expense would threaten the transition timelines).

17 Order, 35 FCC Rcd at 2428 ¶ 203 ("We direct the Wireless Telecommunications Bureau to announce the lump sum that will be available per incumbent earth station as well as the process for electing lump sum payments.").

18 Final Cost Category Notice ¶ 21 (citing Order, 35 FCC Rcd at 2426 ¶ 201).
installation costs in setting the lump sum amount properly implemented the language of the Order.

In short, ACA has not made the requisite showing that it will succeed on the merits. To the contrary, the Bureau’s decision to distinguish between IRD equipment purchase and installation costs, and include only the latter in calculating the lump sum amount, faithfully adhered to the Order.

B. ACA Has Failed to Demonstrate Imminent, Irreparable Harm.

ACA has also failed to meet the “high standard” required to establish irreparable harm. ACA relies on purely economic losses, which do not constitute irreparable harm. ACA complains that the lump sum payment the Bureau has set is too low and should be substantially increased. Thus, an earth station operator’s “loss,” if any, would be the difference between what the operator would receive under the higher lump sum amount ACA demands (accounting for IRD equipment purchase costs) and the Bureau’s amount. That is classic economic loss. Yet courts and the Commission have repeatedly held that “economic loss does not, in and of itself, constitute irreparable harm.”

Pure economic loss can, in very narrow circumstances, justify a stay when it “threatens the very existence of the movant’s business”—but that is not the case with respect to ACA members, and ACA has not attempted to show it here.

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19 England, 454 F.3d at 297; see also Coal. for Common Sense in Gov’t Procurement v. United States, 576 F. Supp. 2d 162, 168 (D.D.C. 2008) (“The irreparable injury requirement erects a very high bar for a movant.”) (citation omitted); ABS Stay Denial Order, 35 FCC Rcd 5814 ¶ 15 (citation omitted) (“Petitioners’ failure to show irreparable harm would be ‘grounds for refusing to issue a preliminary injunction, even if the other three factors entering the calculus merit such relief.’”).


21 Wis. Gas Co., 758 F.2d at 674 (citation omitted).
ACA’s claim further fails because any such economic losses would be entirely of its members’ own voluntary actions. The Order gives an earth station operator the choice between recovering all of its documented costs for relocating to 4.0-4.2 GHz or taking the lump sum payment. Thus, if an earth station operator does not believe that the lump sum amount is adequate, it can forego the election, and it will still be reimbursed for its relocation costs. In other words, the earth station operator will be made whole.

ACA’s desired outcome is to maximize the lump sum payment available to earth station operators who decide to “go it alone” to transition out of the band by, for example, converting to fiber delivery. But the Order never assured operators that their full costs to switch to fiber would be covered by the lump sum payment. As the Bureau explained,

While the 3.7 GHz Report and Order acknowledges that “providing incumbent earth station operators flexibility may allow them to make efficient decisions that better accommodate their needs,” it also recognizes “that replacing existing C-band operations with fiber or other terrestrial service may be . . . more expensive by an order of magnitude.” The 3.7 GHz Report and Order directs the Bureau to establish lump sum amounts based on the “average, estimated costs of relocating” incumbent earth stations, rather than to attempt to approximate the cost of transitioning to alternative transport, and specifically notes that any costs “over and above the lump sum (i.e., additional costs to transition to fiber) would be borne by the electing incumbent earth station operator.” The Commission signaled in these portions of the 3.7 GHz Report and Order that the lump sum was never intended to fully fund the cost of converting to fiber.

Finally, in the unlikely event that ACA prevails on its application for review or before the court of appeals, the Commission could update the lump sum payment amount at that point, repairing any “harm” that has been deemed to have occurred.

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22 CTIA notes that earth station operators who elect the lump sum payment option and transition some or all of their earth stations to 4.0-4.2 GHz will be responsible for the cost of installing any necessary IRD equipment, but the satellite operators will be responsible for the cost of purchasing the equipment.

23 Final Cost Category Notice ¶ 24 (footnotes omitted).
C. Granting a Stay Would Harm CTIA Members and Other Stakeholders.

A stay of the August 31 lump sum election deadline would impose significant and tangible harms on other stakeholders, including CTIA members who are prospective bidders. In evaluating whether a stay is warranted, the Commission considers whether such relief would “substantially injure the other parties interested in the proceeding.” That is precisely the case here, because staying the deadline would disrupt planning by prospective C-band auction bidders, potentially impairing the success of the C-band auction, and impede incumbent satellite operators as they seek to comply with the Commission’s mandate to rapidly clear the C-band.

Harm to Prospective Bidders. Staying the deadline until ACA’s application for review of the Final Cost Category Notice is resolved would cause many months of delay in transitioning existing satellite operations out of the 3.7-4.0 GHz band, given ACA’s stated intention to pursue its challenge in court. Granting a stay would inevitably complicate the auction planning and strategies of prospective bidders, who would be faced with determining whether and how to participate in the auction that is scheduled to start December 8, 2020, only a few months away, in light of potential delays in completing the transition. This uncertainty could both depress auction participation and distort bidding.

Staying the lump sum election date also would harm bidders by impeding their ability to put in place the requisite financing to fund their auction bids, acceleration payments, and relocation payments. Winning bidders will be required to reimburse satellite operators and earth station operators as the Clearinghouse reviews and approves their costs as they are incurred; payments will be made gradually over the transition process, which will take up to three years,

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24 See, e.g., Protecting the Privacy of Customers of Broadband and Other Telecommunications Services, Order Granting Stay Petition in Part, 32 FCC Red 1793, 1795-96 ¶ 7 (2017).
until December 2023. In contrast, because the lump sum payments will be fixed, and the Clearinghouse will have no role in reviewing those payments, winning licensees will likely owe those amounts in the first tranche of payments upon receiving their licenses. These timing differences in payments directly affect potential bidders, who need to assess when payments will be owed, not merely how much those payments are, in order to budget their capital expenditures for securing C-band spectrum and to determine whether and when they will need to seek outside financing. In this way as well, not knowing the extent of their lump sum payment obligations undermines prospective bidders’ ability to project the timing for their payment obligations, making their auction planning even more problematic—again risking adverse impacts on the auction.

**Harm to Satellite Operators.** A stay would also severely complicate satellite operators’ transition plans, threatening the success of the Commission’s carefully sequenced process for rapidly clearing C-band spectrum. Each satellite operator needs to plan for the number of earth stations it will be responsible for relocating to 4.0-4.2 GHz. The number of such stations, where they are located, and how many antennas, filters, and other equipment must be replaced or retuned, are determined by the number of earth station operators that choose to rely on satellite operators to transition them.

Under the August 31 lump sum election deadline set by the Final Cost Category Schedule, satellite operators will know in less than two weeks precisely which earth stations they will be responsible to clear versus which will be cleared by earth station operators themselves under the lump sum option. A stay of that date will undermine their ability to plan an efficient and rapid transition process and disrupt the Commission’s transition schedule.
There is absolutely no basis for the Commission to risk these intractable problems or the consequent threats they would pose to its goal of rapidly clearing C-band spectrum to achieve national policy objectives. ACA’s demand for more lump sum money pales in comparison to the harmful impact on other stakeholders.

D. A Stay Would Disserve the Public Interest.

The last factor the Commission considers when determining whether to grant a stay in its equitable discretion—whether doing so is in the “public interest”—also decisively weighs against such relief here.

The problems that would flow from a stay of the August 31 lump sum election deadline are not just operational ones for CTIA members, other prospective licensees, and satellite operators. They threaten the success of the Commission’s carefully designed transition plan, which is critical to achieving a smooth and quick evolution to 5G in the C-band. That plan contains multiple, sequential, and interrelated deadlines, all of which are essential to its success. Suspending any of these deadlines implicates the validity of the others. For example, as explained above, satellite operators charged with executing the relocation of thousands of earth stations within the next one to three years need to know which earth stations they are accountable for and which they are not; moving ahead on the accelerated relocation schedule would be difficult without that knowledge because it is unknown when earth stations would need to opt out of the satellite-run process. Moreover, the Commission emphasized the importance of the schedule – and specifically the 30-day period for electing to receive lump sum payments –
rejecting a request to extend that period to 60 days.\textsuperscript{25} A stay threatens the success of the Commission’s transition schedule, and that clearly disserves the public interest.

This lack of clarity also would contribute to bidder uncertainty, which could undermine the value of spectrum, depress auction participation, and distort bidding, risking that spectrum does not end up being acquired by those who value it the most—undermining a critical policy objective underlying an auction and limiting auction revenue.

The record confirms that adhering to the Commission’s schedule is of “paramount” importance.\textsuperscript{26} Wireless providers are in the process of investing a projected $275 billion to rapidly deploy 5G networks, which will lead to a projected three million jobs and $500 billion increase for the economy, with profound public interest benefits.\textsuperscript{27} Speed is of the essence, as leading in 4G boosted America’s gross domestic product by nearly $100 billion and spurred an 84 percent increase in wireless-related jobs.\textsuperscript{28} Indeed, in 2019, the wireless industry contributed $690.5 billion to U.S. GDP—making America’s wireless industry the world’s 21st largest economy—and by the end of the 4G decade, wireless-enabled jobs grew to one out of every six

\textsuperscript{25} Order, 35 FCC Rcd 2428 ¶ 203 n.547 (“In light of the transition deadlines we establish in this Report and Order, we decline to extend the time for making the lump sum election beyond 30 days, as requested by CenturyLink.”).

\textsuperscript{26} See, e.g., Joint Comments of Intel Corporation, Intelsat License LLC, and SES Americom, Inc., GN Docket No. 18-122, at 6 (Oct. 29, 2018) (noting that “speed is paramount” as 5G deployment is a national priority); Comments of the C-Band Alliance, GN Docket No. 18-122, at 58 (Oct. 29, 2018) (noting the importance of speedily clearing spectrum to further deployment of terrestrial 5G); Comments of Motorola Solutions, Inc., GN Docket No. 18-122, at 6 (Oct. 29, 2018); Comments of Nokia, GN Docket No. 18-122, at 8 (Oct. 29, 2018).


U.S. jobs, making wireless the largest job contributor across all industries.\textsuperscript{29} America’s 4G leadership likewise helped secure leading positions in key parts of the global wireless ecosystem, including the app economy—benefits that could have gone to other counties had the U.S. not led the world in 4G. We must move quickly to replicate that success as the world moves rapidly toward 5G. But as it stands, key benchmark countries will have more than five times the amount of mid-band spectrum available for 5G than the United States by the end of 2020, with an average of 382 megahertz of licensed mid-band spectrum assigned in the benchmark countries, while the U.S. will have only 70 megahertz of assigned mid-band spectrum through the Citizens Broadband Radio Service auction.\textsuperscript{30} Keeping the C-band auction on schedule is a key component of closing this gap.

Staying the lump sum election deadline to enable ACA to pursue its application for review through a Commission decision and then adjudication by a court of appeals, as ACA threatens to do, could thus deprive consumers of faster access to the next-generation services that the Commission highlighted among the salient benefits of the \textit{Order}. As the Commission recognized, “[t]he record in this proceeding makes clear that licensing mid-band spectrum for flexible use will lead to substantial economic gains, with some economists estimating billions of dollars in increases on spending, new jobs, and America’s economy.”\textsuperscript{31} These public benefits do not even account for the enormous consumer welfare derived from the swifter arrival of 5G-

\begin{itemize}
\item \textsuperscript{29} \textit{The 4G Decade: Quantifying the Benefits}, RECON ANALYTICS (July 2020), \url{https://api.ctia.org/wp-content/uploads/2020/07/The-4G-Decade.pdf}.
\item \textsuperscript{31} \textit{Order}, 35 FCC Rcd 2353 ¶ 20; \textit{see also id.} at 2345 ¶ 3 (“American leadership in 5G is important because 5G networks will power a digital economy of applications and services that themselves will transform our economy, boost economic growth, and improve our quality of life.”).
\end{itemize}
enabled innovation. A stay of any of the carefully sequenced transition deadlines, including the lump sum election deadline, would jeopardize these massive consumer welfare gains.

III. CONCLUSION.

The Commission’s prompt action to make available valuable C-band spectrum is critical to meeting consumer demand for wireless services and assuring U.S. global leadership. CTIA’s members need this mid-band spectrum now, and the Commission should not risk derailing the transition from the path it rightly set. The Commission should therefore deny ACA’s request for stay.

Respectfully submitted,

/s/ Jennifer L. Oberhausen
Jennifer L. Oberhausen
Director, Regulatory Affairs

Thomas C. Power
Senior Vice President and General Counsel

Scott K. Bergmann
Senior Vice President, Regulatory Affairs

Kara Graves
Assistant Vice President, Regulatory Affairs

CTIA
1400 16th Street, NW,
Suite 600
Washington, D.C. 20036
(202) 736-3200

August 19, 2020
CERTIFICATE OF SERVICE

I, Jennifer L. Oberhausen, hereby certify that the foregoing Opposition of CTIA to Request for

Stay was served this 19th day of August 2020 by email to:

Matthew M. Polka
ACA Connects–America’s Communications
Association
Seven Parkway Center, Suite 755
Pittsburgh, PA 15220

Ross J. Lieberman
Michael J. Jacobs
ACA Connects–America’s Communications
Association
2415 39th Place NW
Washington, DC 20007

Jeffery Lamken
Rayiner Hashem
MOLOLAMKEN LLP
The Watergate, Suite 660
600 New Hampshire Ave. NW
Washington, DC 20037

/s/ Jennifer L. Oberhausen
Jennifer L. Oberhausen

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