No. 17-1451

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

In re: BLANCA TELEPHONE COMPANY,

Petitioner.

On Petition for a Writ of Mandamus to
the Federal Communications Commission

RESPONDENT FEDERAL COMMUNICATIONS COMMISSION'S OPPOSITION TO PETITIONER'S MOTION FOR STAY

INTRODUCTION

Petitioner Blanca Telephone Company asks this Court to stay, pending a petition for a writ of mandamus, a Federal Communications Commission order—issued upon culmination of a multi-year investigation—finding that Blanca improperly claimed millions of dollars of public support for which it was not eligible and directing Blanca to repay approximately $6.75 million in overpayments. *See In re Blanca Tel. Co.*, 32 FCC Rcd. ----, 2017 WL 6334374 (2017) (*Order*), *reprinted at* Mot. App. 26–50.

At the outset, Blanca's request for a judicial stay is both procedurally defective and barred by 47 U.S.C. § 405(a) because Blanca did not request a stay from the FCC before seeking judicial intervention and now seeks a judicial stay on grounds that it never presented to the agency.

More fundamentally, Blanca's stay motion makes no attempt to show that the *Order* is wrong on the merits or is likely to be overturned upon further review. That stark failure provides a separate and additional basis on which the stay request must be denied.

Rather than address the merits of the *Order*, Blanca instead claims that an FCC regulation, 47 C.F.R. § 1.1910(b)(3)(i), entitles it to an automatic stay of the *Order* until the time for seeking further review has expired. That is wrong for at least two reasons:

First, the provision upon which Blanca relies applies only when a party "has timely filed a challenge through an administrative appeal or a contested judicial proceeding." 47 C.F.R. § 1.1910(b)(3)(i). At this time, however, Blanca has not filed any petition for judicial review of the *Order* or for reconsideration by the agency. Absent a timely request for further review on the merits, the regulation does not apply here.

Second, even if it applied, the regulation would address only one consequence of the *Order*: The cited provision merely suspends operation of the Commission's "red light" rule, 47 C.F.R. § 1.1910, which restricts parties with delinquent debts from conducting certain business before the Commission. It offers no relief, however, from other consequences of the *Order*, such as the government's ability to withhold future payments as an offset against Blanca's unpaid debt or to commence a judicial action against Blanca to collect the outstanding balance. The regulation thus could not support Blanca's request for a stay of the entire *Order*, as opposed to narrow relief from the red-light rule.

Blanca also is not entitled to a stay because it has not shown that it faces any imminent threat of irreparable harm. Insofar as Blanca seeks relief from the red-light rule, any harm is of Blanca's own making, because it can forestall the application of the rule simply by requesting further review on the merits by "timely fil[ing] a challenge through an administrative appeal or a contested judicial proceeding." 47 C.F.R. § 1.1910(b)(3)(i). And to the extent that interim relief is not available, Blanca has not made the necessary showing that it faces any imminent threat of irreparable harm (such as going out of business) during the

time it would take to complete any further review. Indeed, Blanca fails to substantiate its vague and conclusory claims of supposedly "ruinous" consequences with any factual support or to produce any evidence to corroborate these self-serving claims.

For all of these reasons, Blanca has failed to show that it is entitled to a stay of the *Order* pending resolution of its mandamus petition. The motion for a stay should therefore be denied.

BACKGROUND

1. Congress has charged the Federal Communications Commission with ensuring the availability of reasonably priced telecommunications services throughout the nation, a goal known as "universal service." *See* 47 U.S.C. §§ 151, 254. To that end, the FCC oversees several universal service programs; one, the "high-cost" program, subsidizes telecommunications in rural and insular areas, where it is often more expensive to provide service due to low population density, unaccommodating terrain, and other factors. *See*, *e.g.*, *Federal–State Joint Board on Universal Service*, 18 FCC Rcd. 22559 (2003); *Rural Cellular Ass'n v. FCC*, 588 F.3d 1095, 1098–99 (2009); *Alenco Commc'ns v. FCC*, 201 F.3d 608, 617 (5th Cir. 2000).

To support these programs, the FCC in 1997 established the Universal Service Fund (USF or Fund). *Federal–State Joint Board on Universal Service*, 12 FCC Rcd. 22493 (1997). The Fund is financed through mandatory contributions by telecommunications carriers, and carriers typically recoup these charges from their customers through surcharges on all customers' bills. *See* 47 U.S.C. § 254(d); 47 C.F.R. §§ 54.706, 54.712; *Rural Cellular Ass'n*, 588 F.3d at 1099.

2. Blanca Telephone Company is a telecommunications carrier eligible to receive universal service support for providing wireline telephone service in portions of rural Colorado. *Order* ¶ 1 (Mot. App. 26). At all times relevant here, the amount of support paid to Blanca was based on Blanca's self-reported costs of providing wireline telephone service within its designated study area. *Id.* ¶ 12 (Mot. App. 31).

An audit by the FCC's Office of Inspector General—along with investigations by the National Exchange Carrier Association (NECA), the association of wireline carriers responsible for receiving Blanca's cost data, and the Universal Service Administrative Company (USAC), the administrator of the Fund—determined that Blanca improperly claimed greater amounts of support than it was eligible for by mischaracterizing certain costs. *Order* ¶¶ 14–15 (Mot. App. 32). As a rate-of-return

incumbent carrier in its designated study area, Blanca was eligible for subsidies based on the costs it incurred to provide "regulated" services, such as wireline telephone service. *Id.* ¶¶ 4–5, 35 (Mot. App. 27–29, 38). But Blanca improperly included costs for its *mobile* telephone service (including costs for service outside its study area) in its cost studies, even though mobile telephone service is considered a "nonregulated" service. *Id.* ¶¶ 13–16 (Mot. App. 31–33). The FCC's audit concluded that Blanca's improper reporting inflated the amount of universal service support it received by roughly $6.75 million between 2005 and 2010. *Id.* ¶ 15 (Mot. App. 32).

Based on these findings, the FCC's deputy managing director issued a demand letter to Blanca in June 2016 notifying the company that its conduct had resulted in improper universal service payments, that the resulting overpayments constituted a debt owed to the United States, and that Blanca was required to repay the improper subsidies. Mot. App. 1–8. Blanca then filed an application for review by the full Commission and sought assurance that the agency would not take action based on the demand letter while the Commission reviewed the matter. In response, the FCC's acting managing director assured Blanca that its application for review "will be dealt with expeditiously" and that the

agency "will not activate a RED Light on your client's account, [and] neither will an offset be instituted," until the Commission ruled on the application. Mot. App. 14; *accord Order* ¶ 19 (Mot. App. 33).

3. On December 8, 2017, the Commission issued a detailed *Order* denying Blanca's application for review and affirming that Blanca must repay the roughly $6.75 million of improper support that it claimed. Mot. App. 26–50. "[A]s a result of treating nonregulated costs as regulated costs in its cost studies," the Commission concluded, "Blanca received inflated USF disbursements * * * that it now must repay." *Order* ¶ 34 (Mot. App. 37); *see also id.* ¶ 35 (Mot. App. 38) (finding that Blanca violated multiple FCC rules, "result[ing] in an erroneous increase in the amount of high-cost support paid to Blanca"). By including costs for its mobile telephone service (including costs for service outside its study area) in its cost studies used to calculate universal service support, even though mobile telephone service is considered a "nonregulated" service for this purpose, "Blanca ignored Commission orders and NECA guidance making clear that it could only include regulated costs in its cost studies." *Id.* ¶ 24 (Mot. App. 34). The Commission rejected Blanca's argument that its mobile telephone service could have been eligible for certain universal service subsidies if Blanca were treated as a competitive carrier rather

than an incumbent carrier, explaining that Blanca was designated as an incumbent carrier throughout its study area, that it had not sought to modify that designation, and that it is not eligible for any universal service support outside its designated study area. *Id.* ¶¶ 36–37 (Mot. App. 38–39).[1]

4. The Commission's determination that Blanca must repay the improper support that it procured from the Universal Service Fund has several consequences.

First, under the FCC's "red light" rule, 47 C.F.R. § 1.1910, parties with delinquent debts are restricted from conducting certain business before the Commission unless the party either has made satisfactory arrangements for repayment or "has timely filed a challenge through an administrative appeal or a contested judicial proceeding," *id.* § 1.1910(b)(3)(i). Because the Commission determined in the *Order* that the improper payments procured by Blanca constitute a debt owed to the

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[1] The *Order* also rejected Blanca's arguments that the Commission lacks authority to seek repayment of the improper subsidies, *Order* ¶¶ 40–41, 51–53 (Mot. App. 41–42, 46–47); that the Commission's efforts to recover these funds are inconsistent with various statutory and regulatory provisions, *id.* ¶¶ 42–46 (Mot. App. 42–45); and that the Commission failed to provide due process, *id.* ¶¶ 38–39, 47–50 (Mot. App. 39–40, 45–46).

Commission, and because Blanca has not at this time filed any petition for judicial review of the *Order* or for reconsideration by the agency, the FCC's Red Light Display System currently reports Blanca's status as "Red" and states that its delinquent debt "is restricting [Blanca] from doing business with the FCC." Mot. App. 51.

Second, the government may withhold future universal service payments as an offset against a party's unpaid debt. *Order* ¶ 54 (Mot. App. 47) (directing agency staff "to pursue collection of [the unpaid debt] from Blanca," including "by offset"); *see* 31 U.S.C. § 3716 (authorizing collection of debts owed to the United States through administrative offset); 47 C.F.R. § 1.1912 (same). Accordingly, three days after the *Order* was issued, USAC notified Blanca that it will withhold future universal service payments until the delinquent debt has been satisfied in full, *see* Mot. App. 53–54, and on December 26 USAC processed high-cost payments for January 2018 and notified Blanca that its payment was withheld.

Third, the *Order* authorizes Commission staff, through "referral of the debt to the United States Department of Treasury * * * or by any other means authorized by the [Debt Collection Improvement Act] or common law," *Order* ¶ 54 (Mot. App. 47–48), to commence a judicial

action to collect the outstanding balance. *See* 28 U.S.C. §§ 3001 *et seq*. No such action has been filed, and should the government choose to pursue the outstanding balance in court, Blanca would be entitled to raise any applicable defenses at that time.

5. As of the date of this filing, Blanca has not sought further review on the merits by filing a petition for judicial review of the *Order* or for reconsideration by the Commission, nor has Blanca sought an administrative stay from the agency pending any further review.

ARGUMENT

Blanca's motion for a stay should be denied. The company never presented its request, or its arguments, to the agency in the first instance as required by the Federal Rules and the Communications Act. In any event, Blanca has not shown that it can satisfy any (much less all) of the substantive requirements—likelihood of success, irreparable injury, or balance of the harms—necessary to support a judicial stay.

I. BLANCA'S STAY MOTION IS PROCEDURALLY BARRED.

As a threshold matter, Blanca's stay motion should be denied because it is procedurally defective and barred by 47 U.S.C. § 405(a). Under Federal Rule of Appellate Procedure 18(a)(1), "[a] petitioner must ordinarily move first before the agency for a stay" before seeking judicial

intervention, but Blanca did not do so.[2] And under 47 U.S.C. § 405(a), a party may not seek judicial review of any "questions of fact or law upon which the [FCC] has been afforded no opportunity to pass," *see In re FCC 11-161*, 753 F.3d 1015, 1063–64 (10th Cir. 2014), but Blanca now seeks a judicial stay on grounds that it never presented to the agency: Blanca sought (and received) assurance from the agency that no action would be taken while the Commission was reviewing this matter, but it never argued before the agency that any action must be stayed *after* the Commission issues a final determination and completes its review. Having failed to comply with these threshold requirements, Blanca cannot proceed directly to court with its extraordinary request for a judicial stay.

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[2] Citing the Tenth Circuit Practitioner's Guide, Blanca claims that "[s]tay motions do not have to be presented to the agency when filed in conjunction with a mandamus petition." Mot. 1 n.1. But the cited passage from the Practitioner's Guide says only that, "[i]n this circumstance, it is not necessary to show prior application *to the district court*"; it does not purport to excuse parties to agency proceedings from requesting an administrative stay *from the agency* before seeking judicial intervention, as required by Federal Rule of Appellate Procedure 18(a)(1). Tenth Circuit Practitioner's Guide § XI, at 68 (9th ed. 2016) (emphasis added). In any event, the Practitioner's Guide should not be read to override the Federal Rules promulgated under the Rules Enabling Act.

II. BLANCA HAS NOT SATISFIED THE STRINGENT REQUIREMENTS FOR A JUDICIAL STAY.

Procedural defects aside, Blanca has not come close to satisfying the stringent requirements for obtaining a judicial stay of the *Order*. A stay "is an 'intrusion into the ordinary processes of administrative and judicial review,' and accordingly 'is not a matter of right, even if irreparable injury might otherwise result.'" *Nken v. Holder*, 556 U.S. 418, 427 (2009) (citations omitted). Instead, to qualify for extraordinary relief through a judicial stay, Blanca must show that (1) it is likely to prevail on the merits, (2) it will suffer irreparable harm absent a stay, (3) a stay will not harm others, and (4) the public interest favors a stay. 10th Cir. R. 8.1, 18.1; *Nken*, 556 U.S. at 434; *Singh v. Ashcroft*, 375 F.3d 1007, 1008 (10th Cir. 2004) (per curiam). Blanca has not satisfied any of these requirements, much less all of them.

A. Blanca Has Not Established A Likelihood Of Success On The Merits.

1. First and foremost, Blanca's stay motion must be denied because it makes no attempt to show that the *Order* is wrong on the merits or is likely to be overturned upon further review. Blanca's motion does not dispute that, as a rate-of-return incumbent carrier, Blanca was authorized to include only "regulated" costs in its cost studies used to

calculate universal service support. *See Order* ¶¶ 4–5, 35 (Mot. App. 27–29, 38). It likewise does not deny that Blanca included costs for its mobile telephone service (including costs for service outside its study area) in its cost studies, even though mobile telephone service is considered a "nonregulated" service for this purpose. *See id.* ¶¶ 13–16 (Mot. App. 31–33). Blanca also does not challenge the Commission's calculation that its conduct resulted in an overpayment of nearly $6.75 million in universal service support. *See id.* ¶ 15 (Mot. App. 32); *see also id.* ¶ 34 (Mot. App. 37) (noting that Blanca "has not challenged the accuracy of [the FCC's] accounting"). And Blanca's motion does not dispute that Blanca is legally obligated to repay any improper subsidies that it procured. *See id.* ¶¶ 38–41, 51–53 (Mot. App. 39–42, 46–47).[3]

Absent any attempt to demonstrate that the *Order* is wrong on the merits, much less a showing that the *Order* is likely to be overturned upon further review, Blanca cannot obtain a judicial stay of the *Order*. *See Singh*, 375 F.3d at 1008–09 (denying a stay where the petitioner had not "developed or supported by citation to relevant authority" any argument that "the [agency's] logic was faulty").

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[3] Blanca's motion likewise does not renew any of its challenges to the Commission's procedures for seeking recovery of the improper payments. *See Order* ¶¶ 42–50 (Mot. App. 42–46).

2. Rather than confront the merits of the *Order*, Blanca instead contends that a part of the FCC's red-light rule, 47 C.F.R. § 1.1910(b)(3)(i), entitles it to an automatic stay of the *Order* until the time for seeking further review has expired, even when it has not filed any request for further review on the merits. But the provision Blanca cites does not apply here, and even if it did apply, it would offer only narrow relief from the red-light rule and could not support a stay of the entire *Order*.

Under the provision Blanca relies on, certain "provisions of [the red-light rule] will not apply if the applicant has timely filed a challenge through an administrative appeal or a contested judicial proceeding either to the existence or amount of the non-tax delinquent debt owed the Commission." 47 C.F.R. § 1.1910(b)(3)(i). By its plain terms, relief under this provision is not automatic, but instead requires Blanca to "timely file[] a challenge" to the *Order* "through an administrative appeal or a contested judicial proceeding." *Ibid.* At this time, however, Blanca has not filed any petition for judicial review of the *Order* or for reconsideration by the agency, so this provision does not apply.

It is one thing to suspend the consequences of a delinquent debt when a challenge to that debt is under review by Commission; it is quite another for Blanca to insist that any action must be stayed *after* the

Commission has completed its review and when no further challenge to the *Order* has been filed, let alone for Blanca to further insist that it is entitled to such a stay without *any* showing that the *Order* is wrong on the merits or that the other traditional stay factors are satisfied. Unless and until Blanca timely files a petition for further review on the merits, the provision that Blanca seeks to rely on does not apply here.

Even if that provision did apply, however, it could not support the relief that Blanca seeks—a stay of the entire *Order*. Blanca's contention that the provision "plainly precludes the imposition of [any] debt related penalties" and would "allow[] Blanca to continue to receive USF funding" (Mot. 5, 6) is wrong: By its terms, the provision affects only "paragraphs (b)(2) and (b)(3) of this section," 47 C.F.R. § 1.1910(b)(3)(i), which are portions of the red-light rule that restrict parties with delinquent debts from conducting certain business before the Commission. The provision thus offers no relief from *other* consequences of the *Order*'s conclusion that Blanca must repay the improper subsidies it procured, such as the government's ability to withhold future payments as an offset against Blanca's unpaid debt or to commence a judicial action against Blanca to collect the outstanding balance.

Apart from the restrictions on processing applications by a party with delinquent debt, the consequences of the *Order* that Blanca complains of are separate from the red-light rule, and thus would be unaffected by the provision Blanca relies on. *See* 47 C.F.R. § 1.1905 ("Nothing contained in these regulations"—which include the red-light rule—"is intended to restrict the Commission from exercising any other right to recover or collect amounts owed to it."). In particular, the government's authority to withhold future universal service payments as an offset against Blanca's unpaid debt rests on independent statutory, regulatory, and common-law authority separate from the red-light rule. *See* 31 U.S.C. § 3716 (authorizing collection of debts owed to the United States through administrative offset); 47 C.F.R. § 1.1912 (same); *United States v. Munsey Trust Co.*, 332 U.S. 234, 239 (1947) ("The government has the same right 'which belongs to every creditor, to apply the unappropriated moneys of his debtor, in his hands, in extinguishment of the debts due to him.'"). For this reason, when the FCC's acting managing director assured Blanca that the agency "will not activate a RED Light on your client's account, [and] neither will an offset be instituted" while the Commission was reviewing this matter, he thereby distinguished the government's authority to withhold funds under an

administrative offset from the effects of the red-light rule. *See* Mot. App. 14. Similarly, the government's authority to commence a judicial action to collect on Blanca's unpaid debt arises from statutory authority independent of the red-light rule. *See* 28 U.S.C. §§ 3001 *et seq*. Thus, even if 47 C.F.R. § 1.1910(b)(3)(i) applied here, it would at most grant Blanca narrow relief from the red-light rule; it could not support a judicial stay of the entire *Order* or of any other consequences of the *Order* that rest on authority independent of the red-light rule.[4]

B. Blanca Has Not Shown That It Faces Any Imminent Threat Of Irreparable Injury.

Blanca also is not entitled to a stay because it has not shown that it faces any imminent threat of irreparable harm during the time it would take to complete any further review (if Blanca does in fact petition for further review of the *Order*). "To constitute irreparable harm, an injury must be certain, great, actual 'and not theoretical.'" *Heideman v. South*

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[4] In a December 21, 2017 motion to supplement its motion for stay and petition for mandamus, Blanca asserts that the FCC retaliated against the company by placing the Colorado RSA 7(B)(2) Limited Partnership (in which Blanca is a partner) in red-light status. There is nothing to Blanca's assertion. By its terms, the red-light rule examines delinquent debt "based on the entity's taxpayer identification number (TIN)." 47 C.F.R. § 1.1910(a)(2). Thus, entities that share a TIN with a delinquent debtor (as the Colorado limited partnership does with Blanca) are placed in red-light status as a matter of course.

Salt Lake City, 348 F.3d 1182, 1189 (10th Cir. 2003) (quoting *Wis. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985)). In addition, the party seeking relief "must show that the injury complained of is of such *imminence* that there is a clear and present need for equitable relief to prevent irreparable harm," such as "evidence that enforcement * * * during the time it will take to litigate * * * will have an irreparable effect in the sense of making it difficult or impossible to resume [its] activities or restore the status quo ante in the event [it] prevail[s]." *Ibid.* (internal quotation marks omitted).

Blanca's motion fails to establish any irreparable harm based on the red-light rule. For one thing, insofar as Blanca seeks relief from the red-light rule, it can avoid the application of that rule simply by requesting further review on the merits by "timely fil[ing] a challenge through an administrative appeal or a contested judicial proceeding." 47 C.F.R. § 1.1910(b)(3)(i). For another, Blanca does not explain how it will be irreparably harmed if its applications are not processed due to the red-light rule. Its mandamus petition points (at 11–12) only to two pending applications, but it admits that one "concerns a cellular station Blanca no longer operates," and it does not explain how the other—a "license assignment/sale transaction between Blanca and AT&T" that has been

in abeyance for more than two years—would cause it to suffer any irreparable harm if not processed immediately.

Nor has Blanca shown that it faces any imminent threat of irreparable harm if it does not continue to receive future universal service disbursements during the time it would take to complete any further review. "Under Tenth Circuit law, it is well established that 'economic loss is usually insufficient to constitute irreparable harm.'" *Coal. of Concerned Citizens to Make Art Smart v. FTA*, 843 F.3d 886, 913 (10th Cir. 2016) (citation omitted). "[S]imple economic loss usually does not, in and of itself, constitute irreparable harm," because "such losses are compensable by monetary damages." *Heideman*, 348 F.3d at 1189.

Although Blanca asserts that "[t]aking away USF funding necessarily means an inability to provide * * * service" (Mot. 7), its motion does not offer any evidence that withholding these funds will imminently drive it out of business or disrupt service during the time it takes to complete any further review. *Cf. Heideman*, 348 F.3d at 1189 ("[C]ounsel asserted that at least one [plaintiff] had been forced out of business, but no such evidence was presented"). A party seeking a judicial stay must "substantiate the claim that irreparable injury is 'likely' to occur. Bare allegations * * * are of no value[,] since the court

must decide whether the harm will *in fact* occur." *Wis. Gas*, 758 F.2d at 674 (citation omitted). Blanca therefore must point to "relevant portions of [the record]," or other evidence accompanying its motion, "to support any factual assertions." *Singh*, 375 F.3d at 1008; *see also Schrier v. Univ. of Colo.*, 427 F.3d 1253, 1267 (10th Cir. 2005) (a party asserting irreparable injury must "apprise this court of any evidence in the record" demonstrating such harm). Here, however, Blanca's motion offers absolutely no evidence for its assertion that the Order will disrupt service to customers. *See Wis. Gas*, 758 F.2d at 675 (alleged injury only "speculative and hypothetical" where the movant "ha[s] not attempted to provide any substantiation"). Blanca thus "has offered no evidence demonstrating the type of loss that satisfies the element of irreparable harm." *Port City Props. v. Union Pac. R.R.*, 518 F.3d 1186, 1190 (10th Cir. 2008).

And insofar as Blanca suggests that it might have difficulty repaying its underlying debt, at this time any such difficulty is wholly speculative and thus cannot constitute imminent, irreparable injury. *Cf. Schrier*, 427 F.3d at 1267 ("speculative harm does not amount to irreparable injury") (internal quotation marks omitted). Blanca offers no evidence whatsoever of its financial condition or its available assets, and

thus has not demonstrated any inability to pay. *See*, *e.g.*, *Mylan Labs., Inc. v. Leavitt*, 484 F. Supp. 2d 109, 123 (D.D.C. 2007). Claims of insolvency that do not offer reasonably specific projections of future revenues and losses, do not detail the company's available assets, and do not "explain with any specificity" how those numbers are reached, "fall[] short of what is necessary to merit a finding of irreparable harm." *See Nat'l Mining Ass'n v. Jackson*, 768 F. Supp. 2d 34, 52 (D.D.C. 2011). And in any event, Blanca cannot show that collection of its underlying debt poses any imminent threat during the pendency of any further review because the government has not commenced any judicial action to collect the debt and because any such action would be subject to further judicial process.

C. A Stay Would Harm Other Ratepayers And Would Be Contrary To The Public Interest.

Finally, the balance of equities weighs heavily against Blanca's stay request because any stay would harm other ratepayers and would be contrary to the public interest. *Cf. Nken*, 556 U.S. at 435 ("[T]he traditional stay inquiry calls for assessing the harm to the opposing party and weighing the public interest. These factors merge when the Government is the opposing party.").

Blanca's assertions that a stay would pose "no risk of harm to the public" and "would not harm any third party" (Mot. 8–9) are incorrect. Requiring the government to continue making future disbursements of universal service funds to Blanca, when Blanca has yet to repay nearly $6.75 million in outstanding debt, would harm all other telecommunications carriers (and indirectly their customers) who contribute to the Universal Service Fund. *See Alenco*, 201 F.3d at 620 ("Because universal service is funded by a general pool subsidized by all telecommunications providers—and thus indirectly by the customers—excess subsidization * * * caus[es] rates unnecessarily to rise"); *accord Qwest Commc'ns Int'l, Inc. v. FCC*, 398 F.3d 1222, 1234 (10th Cir. 2005) (recognizing that "excess subsidization may arguably affect the affordability of telecommunications services"). Continuing to make universal service payments to a carrier that already owes millions of dollars in delinquent debt would be contrary to the Commission's "'responsibility to be a prudent guardian of the public's resources.'" *Vt. Pub. Serv. Bd. v. FCC*, 661 F.3d 54, 65 (D.C. Cir. 2011).

Blanca nonetheless insists (Mot. 7, 9, 10) that a stay is necessary to protect the public because its customers might otherwise lose service. But, as previously explained, Blanca has not demonstrated any imminent

threat that it will be forced to terminate service absent a stay. Blanca's stay motion "include[s] no cost data showing [it] would, in fact, have to leave customers without service" absent a stay. *Cf. Rural Cellular Ass'n*, 588 F.3d at 1104. Nor is Blanca free to terminate its customers' service at will: As this Court has explained, carriers that receive universal service support must, "'throughout the service area for which the designation is received[,] offer the services that are supported,'" and must continue to do so even "in areas where they no longer receive support, or receive reduced support," until they are given permission to discontinue service. *In re FCC 11-161*, 753 F.3d at 1087–88 (quoting 47 U.S.C. § 214(e)(1)(A)). In short, Blanca's customers are not at risk of immediate loss of service because the carrier owes money to the government.

CONCLUSION

The motion for a stay of the *Order* should be denied.

Dated: December 27, 2017

Respectfully submitted,

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I, Scott M. Noveck, hereby certify that on December 27, 2017, I caused the foregoing Opposition to Petitioner's Motion For Stay to be filed with the Clerk of Court for the United States Court of Appeals for the Tenth Circuit using the electronic CM/ECF system. I further certify that all participants in the case, listed below, are registered CM/ECF users and will be served electronically by the CM/ECF system.

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