

FILED

**United States Court of Appeals
Tenth Circuit**

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

March 7, 2014

**Elisabeth A. Shumaker
Clerk of Court**

KSTU, LLC; KUTV LICENSEE, LLC,
d/k/a KUTV, a/k/a KMYU; FOX
BROADCASTING COMPANY;
NEXSTAR BROADCASTING
COMPANY,

Plaintiffs-Appellees,

v.

AEREO, INC.,

Defendant-Appellant.

No. 14-4020
(D.C. No. 2:13-CV-00910-DAK)
(D. Utah)

ORDER

Before **BRISCOE**, Chief Judge, **HARTZ** and **BACHARACH**, Circuit Judges.

The district court entered a preliminary injunction enjoining Aereo, Inc., “from streaming, transmitting, retransmitting, or otherwise publicly performing, displaying, or distributing any” of the Plaintiffs’ Copyrighted Programming (as defined in the injunction) “over the Internet (through websites such as aereo.com), or by means of any device or process within the geographic boundaries of the Court of Appeals for the Tenth Circuit.” Order Granting Motions for Preliminary Injunction at 3. Aereo has filed a notice of appeal and an emergency motion to stay the preliminary injunction during the pendency of its appeal.

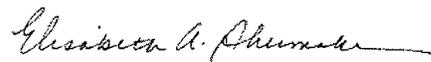
A stay pending appeal “is not a matter of right, even if irreparable injury might otherwise result.” *Nken v. Holder*, 556 U.S. 418, 433 (2009) (internal quotation marks omitted). In exercising its discretion whether to issue a stay, this court considers the traditional stay factors as applied to the circumstances of the particular case. *See id.* at 433-34. Aereo “bears the burden of showing that the circumstances justify an exercise of that discretion.” *Id.* at 434.

The four factors we consider are: “(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 the issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Id.* (internal quotation marks omitted). The first two factors “are the most critical.” *Id.*

Aereo has not made a strong showing that it is likely to succeed on the merits of its appeal. Nor has Aereo demonstrated that the other factors weigh in its favor. We therefore deny Aereo’s emergency motion to stay the preliminary injunction pending appeal.

Judge Hartz would grant the motion.

Entered for the Court



ELISABETH A. SHUMAKER, Clerk