

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

NTCH, INC.)

Petitioner,)

v.)

FEDERAL COMMUNICATIONS)
COMMISSION)

Respondent.)

Case No. 18-1243

PETITION FOR REVIEW

Pursuant to 47 U.S.C. § 402(a), 28 U.S.C. §§ 2342(1) and 2344, 5 U.S.C. § 701, *et seq.*, Rule 15(a) of the Federal Rules of Appellate Procedure, and Circuit Rule 15, NTCH, Inc. (“NTCH”) hereby petitions this Court for review of the Federal Communications Commission’s (“FCC”) Report and Order and Order of Proposed Modification (“AWS-4 R&O”) in *Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz Bands, et al.*, 27 FCC Rcd. 16102 (2012), the FCC’s Wireless Telecommunications Bureau’s (“WTB”) Order of Modification, 28 FCC Rcd. 1276 (WTB 2013) (“AWS-4 Order of Modification”) in the same case, and the Order on Reconsideration, FCC 18-121 (adopted Aug. 14, 2018; released Aug. 16, 2018) (“AWS-4 Reconsideration

Order”) in the same case. A copy of *AWS-4 Reconsideration Order* is attached hereto.

The case under review involves the FCC’s decision to assign the Advanced Wireless Services-4 (“AWS-4”) spectrum in the 2 GHz band to the incumbent Mobile Satellite Service (“MSS”) licensees without utilizing proper competitive bidding procedures. In the *AWS-4 R&O*, the FCC determined that the satellite licenses held by two related companies should be modified to permit terrestrial operations. In a follow-on proceeding (i.e., the *AWS-4 Order of Modification*), the WTB then modified the subject licenses pursuant to the reasoning outlined in the *AWS-4 R&O*. In the Order now under review, the FCC addressed two separate petitions for reconsideration filed by NTCH: (1) Petition for Reconsideration of the *AWS-4 R&O*, filed March 7, 2013 (“NTCH *AWS-4 R&O* Petition for Reconsideration”) – addressing the modification of MSS licenses and AWS-4 service rules prescribed by the FCC in the *AWS-4 R&O*; and (2) Petition for Reconsideration of the *AWS-4 Order of Modification*, filed March 13, 2013 (“NTCH *AWS-4 Order of Modification* Petition for Reconsideration”) – addressing in an abundance of caution the actual modification of the 2 GHz licenses held by two subsidiaries of DISH Network Corporation pursuant to the *AWS-4 R&O*. Because the FCC’s *AWS-4 Order of Modification* effectively implemented the

rulings made in the *AWS-4 R&O*, this petition is being filed under the provisions of 47 U.S.C. § 402(a).

Because the *AWS-4 Reconsideration Order* affirmed the modification of the satellite licenses, however, the application of 47 U.S.C. § 402(b) must be considered. This Court has exclusive jurisdiction over cases where: (1) the FCC denies “an [application] for . . . modification of an[] . . . instrument of authorization,” 47 U.S.C. § 402(b)(2); and (2) the appellant “is aggrieved” and its “interests are adversely affected” by grant or denial of such an application. 47 U.S.C. § 402(b)(6). Here there was no “application” to modify a license. Rather, the modification was authorized by a show cause proceeding initiated by the FCC – not an applicant. Since no other provision of § 402(b) applies, review of the instant case necessarily falls under § 402(a). However, should the Court determine that the license modification element of the underlying FCC proceeding implicates § 402(b), review under that section is alternatively requested. *See Verizon v. FCC*, 740 F.3d 623, 634 (D.C. Cir. 2014) (“Because we plainly have jurisdiction by [either § 402(a) or (b)], we need not decide which is the more appropriate vehicle for our review.” (citation and internal quotation marks omitted)).

Venue in this Court is founded on 28 U.S.C. § 2343.

NTCH seeks relief on the grounds that the *AWS-4 Reconsideration Order* is: (1) arbitrary and capricious; (2) contrary to the provisions of the Communications Act of 1934, as amended, 47 U.S.C § 151, *et seq.*; (3) contrary to the FCC's regulations; (4) contrary to longstanding FCC policy; and (5) otherwise not in accordance with the law. Accordingly, NTCH respectfully requests that this Court reverse the *AWS-4 R&O* and the associated orders permitting the modification of the DISH satellite licenses without any opportunity for interested parties to acquire the newly licensed spectrum, and provide such additional relief as may be appropriate.

Respectfully submitted,

/s/ Donald J. Evans

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ATTACHMENT

AWS-4 Reconsideration Order

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