

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued November 6, 1998 Decided December 15, 1998

No. 98-1061

Leticia Jaramillo and

Joseph Rey,

Appellants

v.

Federal Communications Commission,

Appellee

Press Communications LLC,

Intervenor

Appeal of an Order of the

Federal Communications Commission

*Bruce A. Eisen* argued the cause and filed the briefs for appellants.

*Gregory M. Christopher*, Counsel, Federal Communications Commission, argued the cause for appellee. With him on the brief were *Christopher J. Wright*, General Counsel, and *Daniel M. Armstrong*, Associate General Counsel.

*Harry F. Cole* was on the brief for intervenor Press Communications LLC.

Before: Wald, Williams and Henderson, *Circuit Judges*.

Opinion for the Court filed by *Circuit Judge Williams*.

Williams, *Circuit Judge*: Leticia Jaramillo and Joseph Rey  
petition for review of a Federal Communications Commission  
decision to authorize assignment of a radio license; we dis-  
miss for lack of standing.

Press Broadcasting Company sought the FCC's permission  
to assign its license for station WTKS(FM), in Cocoa Beach,  
Florida, to Paxon Broadcasting of Orlando, L.P. The peti-  
tioners here filed a Petition to Deny, arguing that Press was  
not qualified to be a licensee because of alleged deception in a  
decade-old transaction involving the acquisition of a complete-  
ly different station, and that under the Commission's "Jeffer-  
son Radio" policy, see *Jefferson Radio Co. v. FCC*, 340 F.2d  
781 (D.C. Cir. 1964), the assignment must be held up until the  
Commission had resolved that claim. The FCC's Audio  
Services Division dismissed the petition on the merits and  
granted Press's application to transfer. The Commission  
denied review. 13 F.C.C.R. 1026 (1998).

Petitioners, of course, bear the burden of establishing the  
three elements of constitutional standing in this court: injury  
in fact, causation, and redressability. See *Lujan v. Defenders  
of Wildlife*, 504 U.S. 555, 560-61 (1992). They claim to have  
done so in two ways: as listeners and as competitors.

The only assertions of fact on which petitioners base their  
claim to listener standing is that they are "residents of  
Orlando, Florida" and "listeners of WTKS(FM)." (Orlando is

near Cocoa Beach.) But they have identified no serious causal link between FCC scrutiny of the conduct of a licensee who seeks to *depart* from operation of a station and any possible material impairment of their hopes or expectations as listeners.

We assume *arguendo* that petitioners may have suffered a cognizable injury from being within the listening range of a radio station held by a licensee that acquired the station in violation of the FCC's standards of candor. But past injury is not enough to support the standing of a party who doesn't seek damages or similar compensation for that injury. See *Branton v. FCC*, 993 F.2d 906, 909 (D.C. Cir. 1993). If a petitioner cannot obtain compensation to himself for a past injury, he has failed to show its redressability. See *Steel Co. v. Citizens for a Better Env't*, 118 S. Ct. 1003, 1018-19 (1998).

Nor could there be any direct future injury, for the outcome--transfer of the license to another--is exactly the same as would eventuate if the Commission held up the assignment, found Press not qualified, and took away its license. The case is thus completely different from prior decisions of this court where we found listener standing to object to Commission decisions that would create or extend some arguably program-impairing circumstance, such as a duopoly, see *Llerandi v. FCC*, 863 F.2d 79, 85 (D.C. Cir. 1988), or a renewal of a license for a firm guilty of broadcast policy violations, see

*Office of Communication of the United Church of Christ v. FCC*, 359 F.2d 994 (D.C. Cir. 1966) (Fairness Doctrine challenge).

Here no such continuation is contemplated. What is at issue is simply an asserted underenforcement of the Jefferson Radio policy, a policy intended to "enhanc[e] the deterrent effect of whatever substantive provision supports the attack on the incumbent licensee." *Coalition for the Preservation of Hispanic Broad. v. FCC*, 931 F.2d 73, 80 (D.C. Cir. 1991).

The only adverse impact on listeners of any such underenforcement would be a marginal reduction in the *in terrorem* effect of the policy on licensees, leading to some marginal increase in violations of FCC requirements. But just as in *Branton* whatever marginal weakening of the deterrent effect of a statute limiting indecent broadcasting might flow from a specific non-enforcement of that statute was not "immediate" enough to meet Article III standards, 993 F.2d at 909-10, so too is the impact of a mistaken failure to catch a Jefferson Radio violation. We note that if such a weak and indirect effect were enough, listeners *anywhere* could challenge *any* underenforcement of the policy.

We doubt that petitioners' alternative theory--competitor standing--is properly before us. Assuming that a footnote in petitioners' reply brief sufficiently raises such a theory, however, we reject it on the merits. Petitioners appear to argue

that their ownership of a television station in the Orlando area makes them competitors to WTKS(FM). Even assuming in petitioners' favor that competition with a violator of FCC rules is more burdensome than competition with a true-blue follower, the effect of the FCC decision here is to bring about the complete cessation of that competition the moment that Press ceases to be the licensee. Thus, petitioners as competitors are left with irremediable past injury from allegedly illegal competition and future deterrence of such competition; both are as deficient as their equivalents for listener standing.

At bottom petitioners appear to seek the simple satisfaction of seeing the laws enforced--perhaps because years of litigation with Press have made them see their relation with it as a zero-sum game in which every blow to Press is a boon for petitioners. This is not the accepted reading of Article III.

We dismiss the petition.

*So ordered.*