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

In the Matter of	)	
	)	
Ottawa County, Ohio	)	WT Docket No. 02-55
	)	

ORDER

Adopted: February 28, 2011 **Released: February 28, 2011**

By the Deputy Chief, Policy Division, Public Safety and Homeland Security Bureau:

1. By this *Order*, we dismiss the October 10, 2010 petition for reconsideration filed by Ottawa County, Ohio (Ottawa) for lack of standing. Ottawa seeks reconsideration of the September 28, 2010 *Memorandum Opinion and Order*[1] in which the Public Safety and Homeland Security Bureau (Bureau) resolved a dispute between the City of Parma, Ohio (Parma) and Sprint Nextel Corporation (Sprint) in Sprint's favor.

2. Under Commission precedent a party seeking reconsideration of a Commission action must show that its "interests are adversely affected" by the order.[2] In evaluating the "adversely affected" prong of the standard, the Commission has "applied the same test that courts employ in determining whether a person has standing under Article III to appeal a court order: the person must show (1) a personal injury 'in fact'; (2) that the injury is fairly traceable to the challenged action; and (3) that it is likely, not merely speculative, that the requested relief will redress the injury."[3] Moreover, Courts have consistently held that "the mere precedential effect of an adjudicatory order within an agency is not enough to confer standing."[4]

3. Here, Ottawa has suffered no injury in fact. It only is apprehensive that the *City of Parma Order* may affect it in a future adjudication of its case—an adjudication that may never take place if Ottawa successfully negotiates an agreement with Sprint or resolves its differences with Sprint in mediation. Ottawa's interests have not been adversely affected. Its concerns about future injury are remote and speculative. Thus, Ottawa lacks standing to seek reconsideration of the *City of Parma Order.*

4. This is not the first time the Bureau has ruled that licensees, such as Ottawa, lack standing when they allege that Bureau decisions on *de novo* review in other cases may affect their rebanding negotiations. In 2007, we dismissed a similar petition for lack of standing because the

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[1] City of Parma, Ohio and Sprint Nextel Corp., *Memorandum Opinion and Order,* 25 FCC Rcd 13485 (PSHSB 2010).

[2] AT&T Corp. v. Business Telecom, Inc., *Order on Reconsideration*, 16 FCC Rcd 21750, 21751-52 ¶ 5 (2001) (*ATT v. BTI*).

[3] *Id.* at ¶ 7.

[4] *Id. citing, inter alia, Airtouch Paging v. FCC*, 234 F.3d 815, 818 (2d Cir. 2000); *Sea-Land Service, Inc. v. Department of Transportation*, 137 F.3d 640, 648 (D.C. Cir. 1998); *Shell Oil Co. v. FERC*, 47 F.3d 1186, 1202 (D.C. Cir. 1995); *Crowley Caribbean Transport, Inc. v. Pena*, 37 F.3d 671, 674 (D.C. Cir. 1994); *Telecommunications Research and Action Center v. FCC*, 917 F.2d 585, 588 (D.C. Cir. 1990).

petitioners there were not adversely affected.[5] In the *Order* dismissing the petition, the Bureau explicitly stated that its findings in the underlying *Memorandum Opinion and Order* were "limited to the specific facts presented to the Bureau in the record before it," and did not preclude licensees in other cases from asserting that the specific facts in their cases warrant a different result.[6] More recently, we dismissed a petition for declaratory ruling on the grounds that the petitioners there lacked standing for failure to show they had been adversely affected by the underlying order.[7]

5. The Commission's resources are unnecessarily burdened by pleadings of the type submitted by Ottawa that ignore the Commission's procedural rules and are foreclosed by clear precedent. Accordingly, we are dismissing Ottawa's petition and cautioning parties to the 800 MHz proceeding that procedurally deficient filings—such as Ottawa's—may be dismissed summarily. Moreover, we advise parties that the expense of preparing and filing procedurally barred pleadings is not recoverable from Sprint as a prudent and necessary rebanding cost.

6. Accordingly, pursuant to the authority of Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i); and Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, the Petition for Reconsideration, filed October 10, 2010 by the County of Ottawa, Ohio IS DISMISSED.

7. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm
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[5] City of Boston, Mass., *Order,* 22 FCC Rcd 2361 (PSHSB 2007).

[6] *Id.* at 2364.

[7] New Jersey Transit *et al.,* Docket 02-55, *Order* (DA 11-337, Released Feb. 24, 2011) (PSHSB 2011). (Although styled a petition for declaratory ruling, the pleading was, in substance, an untimely petition for reconsideration and was treated as such.)