

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 08-1383

September Term 2008

FCC-08-258

Filed On: April 24, 2009

EMR Policy Institute,

Appellant

v.

Federal Communications Commission,

Appellee

BEFORE: Henderson, Brown, and Griffith, Circuit Judges

ORDER

Upon consideration of the motion to hold in abeyance; the motion to dismiss for lack of standing, the opposition thereto, and the reply; and the motion for leave to file a supplement to the opposition and the lodged supplement, it is

ORDERED that the motion for leave to file a supplement to the opposition be granted. The Clerk is directed to file the lodged supplement. It is

FURTHER ORDERED that the motion to dismiss be granted. The court rejects appellant's assertion that appellee is estopped from challenging standing, because standing goes to this court's jurisdiction and "no action of the parties can confer subject-matter jurisdiction." Natural Resources Defense Council v. Pena, 147 F.3d 1012, 1021 n.3 (D.C. Cir. 1998). To establish standing, appellant must demonstrate (1) an injury in fact that is (2) fairly traceable to the challenged action and (3) likely to be redressed by the requested relief. See Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 102-03 (1998); KERM, Inc. v. FCC, 353 F.3d 57, 59 (D.C. Cir. 2004). Appellant has not met its burden of establishing standing, see Sierra Club v. EPA, 292 F.3d 895, 899 (D.C. Cir. 2002), because it has not shown a "substantial probability," *id.*, that any of its members was injured by the appellee's approval of the license applications in the order on appeal, nor that any alleged injury is redressable by a favorable decision of this court. It is

FURTHER ORDERED that the motion to hold in abeyance be dismissed as moot.

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Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam