

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

In re: Essential Network Technologies, LLC)	
and MetComm.Net, LLC,)	
Petitioners,)	
)	
v.)	No. 24-1027
)	
Federal Communications Commission)	
and United States of America,)	
Respondents.)	

MOTION TO DISMISS

The Federal Communications Commission respectfully moves to dismiss the petition for review in this case. Petitioners complain that the Universal Service Administrative Company (USAC), which administers the FCC’s universal service subsidy program, has improperly withheld subsidies from petitioners. They assert that this Court “has jurisdiction over the subject matter of this action pursuant to the Hobbs Act, 28 U.S.C. § 2342(1), and the Communications Act, 47 U.S.C. § 402(a).” Petition for Review at 1. But the Hobbs Act gives the courts of appeals jurisdiction to review only “final orders” of the FCC. *See* 28 U.S.C. § 2342(1); *N. Am. Catholic Educ. Programming Found., Inc. v. FCC*, 437 F.3d 1206, 1209 (D.C. Cir. 2006). And as petitioners acknowledge, there is no FCC order for the Court to review here. *See* Petitioners’ Motion to Expedite Consideration at 10 (the Commission “has failed ... to render an appealable ... decision”).

Because petitioners do not seek review of any final FCC order, this Court lacks jurisdiction to consider their petition for review. Accordingly, the Court should dismiss the petition for review.¹

Respectfully submitted,

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/s/ James M. Carr

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March 8, 2024

¹ Petitioners have stated that if the Court concludes that it lacks jurisdiction under the Hobbs Act, it should treat the petition for review as a petition for writ of mandamus. Petition for Review at 5. The Commission does not dispute that the Court has jurisdiction under the All Writs Act, 28 U.S.C. § 1651, to consider petitioners' request for a writ of mandamus. Nonetheless, for the reasons discussed in the FCC's opposition to petitioners' motion to expedite consideration, petitioners have failed to demonstrate that they have a "clear and indisputable" right to mandamus relief. *See Illinois v. Ferriero*, 60 F.4th 704, 713-15 (D.C. Cir. 2023).

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CERTIFICATE OF FILING AND SERVICE

I, James M. Carr, hereby certify that on March 8, 2024, I filed the foregoing Motion to Dismiss with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the electronic CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

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