No. 99-1580

In the Supreme Court of the United States

LETICIA JARAMILLO AND JOSEPH REY, PETITIONERS

v.

FEDERAL COMMUNICATIONS COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly held that petitioners lack standing to challenge the renewal of a broadcast license.

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OPINIONS BELOW

The order of the court of appeals (Pet. App. 1a-2a) is unreported. The decision of the Federal Communication Commission (Pet. App. 3a-5a) is reported at 14 FCCR 9296.

JURISDICTION

The order of the court of appeals was entered on October 12, 1999. A petition for rehearing was denied on December 27, 1999 (Pet. App. 6a-7a). The petition for a writ of certiorari was filed on March 27, 2000. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In June 1999, the Federal Communications Commission (FCC or Commission) affirmed, over the objections of petitioners, the renewal of the license of Press Broadcasting Co. (Press) for television station WKCF(TV) licensed to serve Clermont, Florida. See Pet. App. 3a-5a (*Press II*). Petitioners had objected to the renewal on the ground that Press lacked the requisite character qualifications to retain its license. The principal bases for that claim were allegations of deception of the FCC and tax evasion by Press in connection with its acquisition of WKCF(TV) in the mid-1980s. Pet. App. 4a (citing *Press Broadcasting Co.*, 13 FCCR 1026 (1998)).

2. Petitioners had raised the same contentions in objecting to an earlier transaction in which Press sold the license of a station it owned in Cocoa Beach, Florida. See *Press Broadcasting Co.*, 13 FCCR 1026 (1998) (*Press I*), appeal dismissed *sub nom. Jaramillo* v. *FCC*, 162 F.3d 675 (D.C. Cir. 1998) (*Jaramillo I*). The Commission rejected the allegations in the Cocoa Beach proceeding, finding them without merit and insufficient to deny approval of the transaction. *Press I*, 13 FCCR 1028-1029. After the Commission decided *Press I*, petitioners sought judicial review of that decision. The court dismissed the case for lack of standing. *Jaramillo I*, 162 F.3d at 676-677. The appeals court found that petitioners had not shown any injury, as either listeners of the Cocoa Beach station or competitors with that station,[*] that could be redressed by judicial review. To

[*] Petitioners at the time owned stations in Florida that competed with the Clermont station and others owned by Press. There is no claim of competitor standing in this case, as petitioners

have standing as a listener, the court ruled, one must "object to Commission decisions that would create or extend some arguably program-impairing circumstance, such as a duopoly * * * or a renewal of a license for a firm guilty of broadcast policy violations," such as violations of the Fairness Doctrine. *Id.* at 677. By contrast, petitioners' only concrete interest in the matter was "to seek the simple satisfaction of seeing the laws enforced." *Ibid.* The court found that concern insufficient to confer standing under Article III.

3. Relying on its findings in *Press I*, the Commission in *Press II* rejected petitioners' claims with respect to the Clermont station. Pet. App. 4a. Petitioners sought judicial review of *Press II*, and, in the order on review, the appeals court dismissed the case for lack of standing. The court held that petitioners had "not met their burden of clearly alleging facts that would establish standing to bring this action." *Id.* at 1a-2a. Specifically, they had "not demonstrated that they have standing as members of the viewing public." *Id.* at 2a (citing *Jaramillo I*, 162 F.3d at 677). Neither had petitioners shown themselves to have standing as a competitor, for "their alleged future injury is entirely hypothetical." *Ibid.*

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or any other court of appeals. Further review is not warranted.

1. The court of appeals correctly found that petitioners lack standing. In order to have standing under

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have sold the station that competed with Press's Clermont station. See Pet. 3 n.2.

Article III, a litigant must demonstrate that it has suffered a concrete injury that was caused by the action complained of and will be redressed by a decision in its favor. See *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992). Petitioners claim to have standing as viewers of the Clermont station, but neither before the court of appeals nor in this Court have they identified an actual injury that would be redressed by a reversal of the FCC's decision here. That is particularly so now that Press has sold the Clermont station, see Pet. 3 n.2, and is no longer the licensee. In that situation, as the court of appeals found in identical circumstances in *Jaramillo I*, there is "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 [petitioners'] hopes or expectations as listeners." 162 F.3d at 676-677.

Instead of demonstrating that they have suffered a particular, redressable injury, petitioners claim a right to challenge "for any reason" an FCC decision to grant or renew a license. Pet. 3-4. Petitioners claim (Pet. 4) to find such a right in 47 U.S.C. 402(b)(6), which allows any "aggrieved" person to seek judicial review of an FCC licensing decision. Pet. 4. Nothing in the statute, of course, purports to override the requirements of Article III standing, nor could it do so. The broad statutory grant of permission to seek review may be sufficient to meet the judicially imposed test for prudential standing, but a concrete injury in fact is a constitutional requirement in every case. See *Federal Election Comm'n* v. *Akins*, 524 U.S. 11, 19-20 (1998).

2. Petitioners also claim that the court of appeals' decision conflicts with *FCC* v. *Sanders Brothers Radio Station*, 309 U.S. 470 (1940). There, the Court ruled that an existing licensee had standing to challenge the

FCC's licensing of a competing station in the same market. The existing station suffered an obvious redressable injury—an increase in competition—that makes *Sanders Brothers* entirely unlike this case. Contrary to petitioners' assertion (Pet. 6), listeners are not always in the same position as competitors, which can suffer an actual economic injury from improper licensing.

Similarly, the District of Columbia Circuit's earlier decision in *United Church of Christ* v. *FCC*, 359 F.2d 994 (1966) (*UCC*), creates no conflict. *UCC* found that listeners had standing when they complained of matters that directly affected them as listeners, such as "programming deficiencies or offensive overcommercialization." *Id.* at 1005. In this case, by contrast, petitioners have not set forth any "program-impairing circumstance" that actually affects their listening. *Jaramillo I*, 165 F.3d at 677. Thus, even if this Court had somehow adopted *UCC* in its own holdings as petitioners assert (Pet. 4-5), there is no conflict. Petitioners' central concern continues to be the abstract issue of the FCC's enforcement of the law, which is insufficient to confer standing. Moreover, *UCC* is also a decision of the District of Columbia Circuit, and any intra-circuit conflict does not provide a basis for further review. See *Wisniewski* v. *United States*, 353 U.S. 901, 902 (1957) (per curiam) ("It is primarily the task of a Court of Appeals to reconcile its internal difficulties.").

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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