

equipment. *Id.* As relief, the complaint seeks an order requiring the FCC to reinstate the analogue signal. *Id.* Asserting that “the actions of the FCC has infringed upon all of our freedoms,” the plaintiff “is simply asking the court to give Americans, back, their constitutional rights to ‘Free’ airwaves as well as their right to choose.” *Id.* The complaint does not indicate whether the plaintiff’s message is opinion or commercial, and it does not allege that the plaintiff is unable to communicate his message via the digital television signal.

A federal court is limited by the Constitution to considering matters that present an actual case or controversy. U.S. Const. art. III, § 2. Standing is one of the justiciability doctrines that has developed to give meaning to Article III’s case or controversy requirement. *Nat’l Treas. Employees Union v. United States*, 101 F.3d 1423, 1427 (D.C. Cir. 1996). Article III standing is comprised of three elements. First, standing requires a plaintiff to have suffered an injury in fact, which is an invasion of a legally protected interest that is both concrete and particularized and actual or imminent rather than conjectural or hypothetical. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). “The complainant must allege an injury to *himself* that is distinct and palpable.” *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990) (internal quotations marks and citation omitted; emphasis added). Second, standing requires that “the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court.” *Lujan v. Defenders of Wildlife*, 504 U.S. at 560 (internal quotation marks and alterations omitted). Third, for a plaintiff to have standing, it “must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.” *Id.* at 561 (internal quotation marks omitted). “[W]hen the plaintiff is not himself the object of the government action or inaction he challenges, standing is not precluded, but it is ordinarily substantially more difficult to establish.” *Id.* at 562 (internal quotation marks omitted).

Here, the plaintiff has not alleged facts showing that it is plausible that he has suffered a concrete and particularized actual injury in fact. Rather, he has merely speculated that his message is not reaching some unstated number of people that he presumes it would have reached if the analogue signal had not been discontinued. In addition, the complaint does not allege facts showing that it is likely that granting the relief requested will address any injury in fact. Because the plaintiff has not established two of the three elements of Article III standing, and because standing is a matter of subject matter jurisdiction, the Court concludes that this action must be dismissed without prejudice for lack of jurisdiction.

A separate order accompanies this memorandum opinion.

Date: 7/9/09


United States District Judge