

19-1231 FEDERAL COMMUNICATIONS COMMISSION V. PROMETHEUS RADIO PROJECT

DECISION BELOW: 939 F.3d 567

LOWER COURT CASE NUMBER: 17-1107, 17-1109, 17-1110, 17-1111, 18-1092, 18-1669, 18-1670, 18-1671, 18-2943, 18-3335

QUESTION PRESENTED:

To preserve competition and viewpoint diversity, the Federal Communications Commission (FCC) has historically restricted the ability of broadcasters to own multiple outlets in a single market. In Section 202(h) of the Telecommunications Act of 1996, as amended, 47 U.S.C. 303 note, Congress directed the FCC to review these ownership rules every four years to "determine whether any of such rules are necessary in the public interest as the result of competition," and to "repeal or modify any regulation [the FCC] determines to be no longer in the public interest." In 2003, the FCC sought to relax certain ownership rules that it had determined were no longer necessary in light of dramatically changed market conditions. In a series of three appeals spanning the past 17 years, however, the same divided panel of the United States Court of Appeals for the Third Circuit has repeatedly vacated the FCC's attempts to reform its ownership rules. The effect of those decisions has been to maintain in effect decades-old FCC ownership restrictions that the agency believes to be outmoded. In the decision below, the panel majority vacated the FCC's revised ownership rules and other regulatory changes solely on the ground that the agency had not adequately analyzed the potential effect of the regulatory changes on female and minority ownership of broadcast stations. The question presented is as follows:

Whether the court of appeals erred in vacating as arbitrary and capricious the FCC orders under review, which, among other things, relaxed the agency's cross-ownership restrictions to accommodate changed market conditions.

CONSOLIDATED WITH 19-1241 FOR ONE HOUR ORAL ARGUMENT.

CERT. GRANTED 10/2/2020