

19-1241 ASSOCIATION OF BROADCASTERS 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:

Section 202(h) of the Telecommunications Act of 1996 directs the Federal Communications Commission to review its media ownership rules every four years and to "repeal" or "modify" any rule that is no longer "necessary in the public interest as the result of competition." In its most recent review, the Commission modified or eliminated a number of decades-old ownership rules that substantial competitive changes in the media marketplace had rendered unnecessary. No party challenged the Commission's statutorily mandated competition analysis. Yet the Third Circuit vacated all of the rule changes solely because it concluded that the Commission inadequately considered the effect of those changes on minority and female ownership- even though Section 202(h) says nothing about that issue-and it ordered the Commission to collect additional statistics on ownership diversity. The same divided Third Circuit panel has repeatedly elevated its policy concerns over the statutory text and purported to retain jurisdiction over the FCC's Section 202(h) orders, blocking review by any other court.

The question presented is:

Whether under Section 202(h) the Commission may repeal or modify media ownership rules that it determines are no longer "necessary in the public interest as the result of competition" without statistical evidence about the prospective effect of its rule changes on minority and female ownership.

CONSOLIDATED WITH 19-1231 FOR ONE HOUR ORAL ARGUMENT.

CERT. GRANTED 10/2/2020