

No. 18-717

In the Supreme Court of the United States

PMCM TV, LLC,

Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION, *et al.*,

Respondents.

*On Petition for Writ of Certiorari to the United States
Court of Appeals for the District of Columbia Circuit*

MOTION TO HOLD CASE IN ABEYANCE

Donald J. Evans

Counsel of Record

Fletcher, Heald and Hildreth, PLC

1300 N. 17th St.

11th Floor

Arlington, VA 22209

(703) 812-0400

evans@fhhlaw.com

Counsel for Petitioner PMCM TV, LLC

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PETITIONER’S MOTION TO HOLD CASE IN ABEYANCE

Pursuant to Rule 21.1 of the Rules of this Court, Petitioner PMCM TV, LLC (“PMCM”) hereby respectfully moves that consideration of PMCM’s pending petition for *certiorari* be held in abeyance pending the Court’s disposition of *Kisor v. O’Rourke*, No. 18-15 (“*Kisor*”).

The instant case arises out of an action of Respondent Federal Communications Commission (“FCC”) in which the agency, *inter alia*, interpreted statutory language in a manner plainly at odds with the clear meaning of that language (as determined by virtually all traditional tenets of statutory construction). On review by the U.S. Court of Appeals for the District of Columbia Circuit (“the Circuit”), the Circuit affirmed the FCC’s flawed statutory interpretation, according considerable deference to the agency’s views. In its petition for *certiorari* to this Court, PMCM seeks review of the principle that reviewing courts should, or may, accord such extensive deference to statutory interpretations advanced by administrative agencies.

PMCM's petition was docketed by the Court on December 4, 2018. On December 10, 2018, the Court granted *certiorari* in *Kisor*, expressly limiting the question to be considered therein to a single point: Whether the Court should overrule two longstanding cases¹ that direct reviewing courts to accord broad deference to agency interpretations of their own regulations. In so doing, the Court signaled its recognition that the question of judicial review of agency decisions – and, particularly, the level of judicial deference that can properly be accorded to such decisions – is a matter of substantial national importance warranting consideration by this Court.

Disposition of *Kisor* may have a substantial impact on the standard by which courts must review agency decisions. Since PMCM seeks review of a similar question, holding PMCM's petition in abeyance until *Kisor* has been resolved would likely permit relatively prompt disposition of the instant case in light of the *Kisor* outcome. In *Kisor*, the agency decision under review involved an interpretation of regulations developed by the agency itself. Here, the FCC's decision purported to interpret *statutory* language that had been drafted, revised, considered and enacted by Congress. To the extent that the Court may overturn or limit the current rule of deference to agency interpretations, that change would apply even more forcefully to the instant case. For while an administrative agency has no particular expertise in divining the intent of legislators, courts are eminently qualified by training and experience to interpret Congressional intent using well established canons of construction. Moreover, and more importantly, the Constitution assigns the job of reviewing federal statutes to Article III courts, not to administrative agencies.

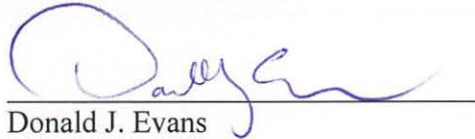
To the extent that the grant of *certiorari* in *Kisor* evidences an intention to review the proper scope of judicial deference to agency decisions, the issue presented by PMCM will

¹ The two cases are *Auer v. Robbins*, 519 U.S. 452 (1997), and *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410 (1945).

involve a similar analysis. Judicial economy will be served by avoiding the need to separately review cases that present the same basic issue. Under these circumstances, deferral of action on PMCM's petition until resolution of *Kisor* is warranted.

Holding this case in abeyance would not impose any burden on the FCC or any other potentially interested party. The FCC's decision below remains technically in effect and will continue to be so unless and until this Court acts.

Respectfully submitted,



Donald J. Evans
Counsel of Record
Fletcher, Heald and Hildreth, PLC
1300 N. 17th St.
11th Floor
Arlington, VA 22209
(703) 812-0400
evans@fhhlaw.com

Counsel for Petitioner PMCM TV, LLC