

IN THE SUPREME COURT OF THE UNITED STATES

No. 19-1231

FEDERAL COMMUNICATIONS COMMISSION AND UNITED STATES OF AMERICA,
PETITIONERS

v.

PROMETHEUS RADIO PROJECT, ET AL.

No. 19-1241

NATIONAL ASSOCIATION OF BROADCASTERS, ET AL.,
PETITIONERS

v.

PROMETHEUS RADIO PROJECT, ET AL.

ON WRITS OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

MOTION FOR DIVIDED ARGUMENT

Pursuant to Rule 28.4 of the Rules of this Court, the Acting Solicitor General, on behalf of the United States and the Federal Communications Commission (FCC), respectfully seeks leave to divide the oral argument for petitioners in the above cases. This Court consolidated the two cases and allotted a total of one hour for oral argument. We move to allocate 15 minutes of oral argument time to the government in No. 19-1231 and 15 minutes to the

National Association of Broadcasters, et al., in No. 19-1241 (Industry Petitioners). Counsel for Industry Petitioners have authorized us to state that they agree with that allocation and therefore join in this motion. Granting this motion would not require the Court to enlarge the overall time for argument.

The FCC enjoys statutory authority to regulate broadcast licensees in the public interest. See 47 U.S.C. 309(a). Pursuant to that authority, it has historically limited the number and type of media outlets that a particular entity may own in a single market. In Section 202(h) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 111, as amended, Congress provided that the FCC "shall review its rules adopted pursuant to this section and all of its ownership rules quadrennially * * * and shall determine whether any of such rules are necessary in the public interest as the result of competition. The Commission shall repeal or modify any regulation it determines to be no longer in the public interest." 47 U.S.C. 303 note.

In the rulemakings at issue here, the FCC either repealed or relaxed various ownership rules pursuant to Section 202(h), including the rule prohibiting ownership of a broadcast station and print newspaper in the same market; the rule limiting ownership of radio and television stations in the same market; and the rule limiting ownership of multiple television stations in a single market. See 19-1241 Pet. App. 64a-310a. The FCC determined that

these modifications were necessary to account for dramatic competitive changes in the media marketplace that had taken place since the rules were promulgated. The FCC also adopted measures to encourage market entry by small businesses and new participants in the broadcasting industry. See J.A. 101-576; J.A. 577-704.

Respondents filed petitions for review challenging the rules in the court of appeals. Industry Petitioners, who represent a diverse coalition of media owners, intervened in support of the government. See Pet. App. 12a. The Third Circuit found the rules arbitrary and capricious in substantial part because the FCC had failed adequately to consider the effect that the rule modifications would have on broadcast station ownership by women and minorities. Id. at 1a-56a; see id. at 34a. The court vacated and remanded for the agency to "ascertain on record evidence the likely effect of any rule changes it proposes * * * on ownership by women and minorities, whether through new empirical research or an in-depth theoretical analysis." Id. at 34a.

This Court granted certiorari in both cases to decide whether the court of appeals was correct in vacating the FCC's rules on the ground that it did. We believe that dividing the argument time for petitioners between the government and Industry Petitioners would be of material assistance to the Court. The government has a significant interest in this case because it directly implicates the validity of federal rules adopted by a

federal agency. Industry Petitioners also have a significant interest in this case as private parties directly subject to the ownership rules, and they can offer the Court a distinct perspective as parties that would benefit from the challenged modifications to those rules and that have litigated adversely to the government with respect to prior versions of the rules. The government accordingly requests that the Court grant the motion for divided argument.

Respectfully submitted.

JEFFREY B. WALL
Acting Solicitor General

DECEMBER 2020