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**In the
Supreme Court of the United States**

NATIONAL ASSOCIATION OF BROADCASTERS, *ET AL.*,

Applicants,

v.

PROMETHEUS RADIO PROJECT, *ET AL.*,

Respondents.

**APPLICATION FOR AN EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

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APPLICATION FOR AN EXTENSION OF TIME

TO THE HONORABLE SAMUEL A. ALITO, JR., ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT:

Pursuant to Rules 13.5, 22, and 30.3 of this Court, Applicants Industry Intervenors¹ respectfully request a 30-day extension of time—to and including Thursday, March 19—within which to file a petition for a writ of certiorari to the United States Court of Appeals for the Third Circuit. The court of appeals entered its judgment on September 23, 2019. Its opinion, captioned *Prometheus Radio Project v. FCC*, 939 F.3d 567 (3d. Cir. 2019), is attached as Exhibit A. The Third Circuit denied Applicants’ petition for panel rehearing and rehearing en banc on November 20, 2019. The order denying rehearing is unreported and a court-filed copy is attached as Exhibit B. Unless extended, the deadline to file a petition for a writ of certiorari is February 18, 2020. This application is timely filed. *See* S. Ct. Rule 30.2. This Court’s jurisdiction will be invoked under 28 U.S.C. § 1254(1).

1. This case presents important and recurring questions involving (1) the interpretation of Section 202(h) of the Telecommunications Act of 1996, a statute directing the FCC to review its rules restricting ownership of television stations, radio stations, and newspapers every four years and to repeal or modify any regulation that is no longer in the public interest “as the result of competition,” Pub. L. No. 104-104, § 202(h), 110 Stat. 56, 111–12 (1996); *see* Pub. L. No. 108-199, § 629, 118 Stat. 3, 99-

¹ The Industry Intervenors are identified in the Corporate Disclosure Statement appended to this Application.

100 (2004), and (2) the appropriate remedy under the Administrative Procedure Act where, as here, a court of appeals identifies an isolated, supposed flaw in the agency’s reasoning.

2. This case arises from a series of FCC orders addressing media ownership rules.² In the *Reconsideration Order*, the FCC repealed or modified many of its ownership rules after concluding that they no longer served the public interest. In vacating the *Reconsideration Order*, the Third Circuit misinterpreted Section 202(h). It replaced Congress’s command to focus on competition with non-statutory policy considerations about media ownership diversity. This error, if left to stand, will continue to prevent the FCC from making necessary changes to its media ownership rules and will distort every future quadrennial review of those rules. The error is compounded because the same panel has retained jurisdiction over the statutorily mandated periodic review for more than 15 years—and continues to assert jurisdiction—blocking any other court of appeals or any other panel of the Third Circuit from considering the question and properly interpreting Section 202(h).

3. This case involves an additional issue meriting this Court’s review. The Third Circuit vacated *multiple* FCC orders based on a supposed flaw in one of those orders, even though the court expressly acknowledged that the FCC could reach the

² The three orders at issue in this case are printed in the FCC Record. See *In re 2014 Quadrennial Regulatory Review*, Second Report and Order, 31 FCC Rcd. 9864 (2016) (“*Second R&O*”), *In re 2014 Quadrennial Regulatory Review*, Order on Reconsideration and Notice of Proposed Rulemaking, 32 FCC Rcd. 9802 (2017) (“*Reconsideration Order*”), and *In re Rules & Policies to Promote New Entry and Ownership Diversity in the Broadcasting Services*, Report and Order, 33 FCC Rcd. 7911 (2018) (“*Incubator Order*”).

exact same conclusions after further consideration. The Third Circuit's wholesale vacatur conflicts with remedial approaches taken by seven other circuits, all of which remand without vacatur where, as here, an agency could correct any flaws in its reasoning while reaching the same ultimate result. *See, e.g., Allied-Signal, Inc. v. U.S. Nuclear Regulatory Comm'n*, 988 F.2d 146, 150 (D.C. Cir. 1993). The overbroad relief ordered by the Third Circuit was inconsistent with the supposed flaw the court identified and poses serious implications for the effective and efficient use of legislative, executive, and judicial resources.

4. This case is ideal for resolving the questions that will be presented. The same Third Circuit panel has reviewed the FCC's efforts to comply with Section 202(h) four times over 15 years. *See Ex. A; Prometheus Radio Project v. FCC*, 824 F.3d 33 (3d Cir. 2016); *Prometheus Radio Project v. FCC*, 652 F.3d 431 (3d Cir. 2011); *Prometheus Radio Project v. FCC*, 373 F.3d 372 (3d Cir. 2004). Judges Ambro and Fuentes have consistently remanded the FCC's decision for failing to promote ownership diversity to their satisfaction, and Judge Scirica has consistently dissented. By continuing to retain jurisdiction, the panel has not only stymied necessary regulatory reform, but has prevented any percolation on the proper interpretation of Section 202(h). The Third Circuit's misinterpretation thus continues to distort the FCC's quadrennial review process and will continue to do so unless corrected by this Court.

5. A 30-day extension to file a petition for a writ of certiorari is necessary to allow counsel for the Industry Intervenors to prepare and file a petition presenting

these important questions to this Court. In addition, counsel for Industry Intervenors has conferred with counsel for the FCC and understands that the FCC will also be filing a request for a 30-day extension of time to file a petition for certiorari. Judicial efficiency counsels in favor of the FCC's and Industry Intervenors' petitions being submitted to this Court and considered concurrently. Industry Intervenors are not aware of any party that would be prejudiced by the requested extension.

Accordingly, good reason exists for this application and Industry Intervenors respectfully request a 30-day extension of time within which to file a petition for a writ of certiorari, to and including Thursday, March 19, 2020.

Dated: February 7, 2020

Respectfully submitted,

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RULE 29.6 CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6, Intervenor makes the following disclosures.

Bonneville International Corporation is a privately held Utah corporation. Bonneville's sole shareholder is Deseret Management Corporation, which, in turn, is privately held by the DMC Reserve Trust. There are three individual trustees, who are appointed by The First Presidency of The Church of Jesus Christ of Latter-day Saints.

Connoisseur Media LLC is a limited liability company organized in the State of Delaware. Connoisseur is owned by Connoisseur Media Holdings, LLC, which is in turn controlled by CM Broadcast Management, LLC.

Fox Corporation owns and operates broadcasting stations and provides programming to affiliate stations nationwide. Fox Corporation has no parent corporation and, to the best of its knowledge as of the date hereof, no publicly held company has a ten percent or greater ownership interest in the company.

National Association of Broadcasters is a nonprofit, incorporated association of radio and television stations and broadcast networks. It has no parent company, and has not issued any shares or debt securities to the public; thus no publicly held company owns ten percent or more of its stock.

News Corporation is a publicly held company comprising business across a range of media, including news and information services, book publishing, and digital real estate services. No publicly held company owns 10% or more of News Corporation's stock.

News Media Alliance is a not-for-profit trade association representing nearly 2,000 companies engaged in all aspects of the news media industry in the United States and Canada. Alliance members account for nearly 90 percent of the daily newspaper circulation in the United States, as well as a range of online, mobile and non-daily publications. The News Media Alliance was known as the Newspaper Association of America until September 2016. The News Media Alliance has no parent companies, and no publicly held company has a ten percent or greater ownership interest in the News Media Alliance.

Nexstar Broadcasting, Inc. is a media corporation that owns and operates commercial broadcast television stations. Nexstar is wholly owned by Nexstar Media Group, Inc., which is a publicly held corporation. No publicly held corporation has a ten percent or greater ownership interest in the stock of Nexstar Media Group, Inc.

The Scranton Times L.P. is controlled by its general partner, The Times Partner, L.L.C., a Pennsylvania limited liability company, which is in turn privately held and controlled by its four individual members.

Sinclair Broadcast Group Inc. is a media corporation that owns, operates, and provides programming and sales services to television stations in various cities across the country. Sinclair has no parent company and no publicly traded company owns more than ten percent of Sinclair's stock.