

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Prometheus Radio Project v. FCC

No. Nos. 17-1107, 17-1109, 17-1110, 17-1111, 18-1092, 18-1669, 18-1670, 18-1671, 18-2943, 18-3335, United States Court of Appeals for the Third Circuit (May 7, 2021)

SUMMARY

The Third Circuit denied all petitions for review of FCC media ownership orders after the Supreme Court reversed its prior vacatur. The case involved challenges to the FCC's 2016 Report and Order (definition of eligible entities), Reconsideration Order, and Incubator Order. Following the Supreme Court's remand, the Third Circuit vacated its earlier opinion and judgment, effectively upholding the FCC's rules.

CASE DETAILS

COURT	United States Court of Appeals for the Third Circuit
WRITING FOR THE COURT	Thomas L. Ambro; Anthony J. Scirica; Julio M. Fuentes
JURISDICTION	Federal
DECIDED	May 7, 2021
DOCKET	Nos. 17-1107, 17-1109, 17-1110, 17-1111, 18-1092, 18-1669, 18-1670, 18-1671, 18-2943, 18-3335
DISPOSITION	dismissed
PROCEDURAL POSTURE	On remand from the United States Supreme Court after reversal of the Third Circuit's prior judgment.
PRECEDENTIAL VALUE	Published
PARTIES	Prometheus Radio Project, Media Mobilizing Project, Multicultural Media, Telecom and Internet Council, National Association of Black Owned Broadcasters, Inc., The Scranton Times, L.P., Bonneville International Corporation, Independent Television Group, Free Press, Office of Communication, Inc. of the United Church of Christ, National Association of Broadcast Employees and Technicians-Communications Workers of America, Common Cause v. Federal Communications Commission, United States of America

TOPICS

administrative law

judicial review of agency action

appellate procedure

PRACTICE AREAS

Administrative Law

Appellate Practice

Media & Communications

QUESTIONS PRESENTED

1. Whether the petitions for review should be denied after the Supreme Court's reversal and remand.

KEY QUOTATIONS

“all petitions for review and requests for relief are denied.” (2)

“This Court’s prior opinion and amended judgment are hereby VACATED.” (2)

FACTUAL BACKGROUND

This case involves consolidated petitions for review of multiple FCC orders concerning media ownership rules. The Third Circuit previously issued an opinion vacating and remanding the orders. The Supreme Court reversed that judgment and remanded for further proceedings. On remand, the Third Circuit entered a judgment order denying all petitions for review and vacating its prior opinion and amended judgment.

PROCEDURAL HISTORY

The Third Circuit previously vacated and remanded FCC orders (Reconsideration Order, Incubator Order, and part of 2016 Report and Order). The Supreme Court granted certiorari, reversed, and remanded. On remand, the Third Circuit denied all petitions for review, vacated its prior opinion and amended judgment, and directed the Clerk to issue the mandate.

DISPOSITION

dismissed

REMAND INSTRUCTIONS

None; the court directed the Clerk to issue the mandate and stated that jurisdiction is not retained.

OPINION

PER CURIAM.

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT _____
Nos. 17-1107, 17-1109, 17-1110, 17-1111 _____ PROMETHEUS RADIO
PROJECT *National Association of Broadcasters **Cox Media Group LLC, Intervenors v.
FEDERAL COMMUNICATIONS COMMISSION; UNITED STATES OF AMERICA
Prometheus Radio Project and Media Mobilizing Project, Petitioners in No. 17-1107 Multicultural
Media, Telecom and Internet Counsel and National Association of Black Owned Broadcasters,
Inc., Petitioners in 17-1109 The Scranton Times, L.P., Petitioners in 17-1110 Bonneville

International Corporation, Petitioners in 17-111 * Prometheus Radio Project, Media Mobilizing Project, Benton Foundation, Common Cause, Media Alliance, Media Council Hawaii, National Association of Broadcasters Employees and Technicians Communications Workers of America, National Organization for Woman Foundation, Office of Communication of the United Church of Christ Inc., Intervenor *(Pursuant to the Clerk's Order date 1/18/17) ** (Pursuant to the Clerk's Order dated 2/7/17) _____ Nos. 18-1092, 18-1669, 18-1670, 18-1671, 18-2943 & 18-3335 _____ PROMETHEUS RADIO PROJECT; MEDIA MOBILIZING PROJECT, Petitioners (No.

18-1092, 18-2943) INDEPENDENT TELEVISION GROUP, Petitioners (No. 18-1669) MULTICULTURAL MEDIA, TELECOM AND INTERNET COUNCIL, INC.; NATIONAL ASSOCIATION OF BLACK-OWNED BROADCASTERS, Petitioners (No. 18-1670, 18-3335) FREE PRESS; OFFICE OF COMMUNICATION, INC. OF THE UNITED CHURCH OF CHRIST; NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES AND TECHNICIANS-COMMUNICATIONS WORKERS OF AMERICA; COMMON CAUSE, Petitioners (No.

18-1671) v. FEDERAL COMMUNICATIONS COMMISSION; UNITED STATES OF AMERICA _____ On Petition for Review of An Order of the Federal Communications Commission (FCC Nos. FCC-1: FCC-16-107; FCC-17-156; FCC-18-114) _____ Before: AMBRO, SCIRICA and FUENTES, Circuit Judges 2 JUDGMENT ORDER By opinion entered on September 23, 2019 and amended judgment entered on September 27, 2019, this Court vacated and remanded the Reconsideration Order and the Incubator Order in their entirety, and vacated and remanded the 2016 Report and Order as to its definition of eligible entities.

The Federal Communications Commission and interested industry parties filed petitions for writs of certiorari with the U.S. Supreme Court, which were granted. On April 1, 2021, the Supreme Court reversed the judgment of this Court and remanded for further proceedings.

On consideration whereof, it is now hereby ORDERED AND ADJUDGED that all petitions for review and requests for relief are denied. This Court's prior opinion and amended judgment are hereby VACATED. This Court and panel do not retain jurisdiction.

The parties to bear their own costs. The Clerk is directed to issue the mandate. By the Court, s/ Thomas L. Ambro Circuit Judge Dated: May 7, 2021 3