

Nos. 19-1231 & 19-1241

IN THE
Supreme Court of the United States

FEDERAL COMMUNICATIONS COMMISSION, *ET AL.*,
Petitioners,

v.

PROMETHEUS RADIO PROJECT, *ET AL.*,
Respondents.

NATIONAL ASSOCIATION OF BROADCASTERS, *ET AL.*,
Petitioners,

v.

PROMETHEUS RADIO PROJECT, *ET AL.*,
Respondents.

**On Writs Of Certiorari To The United States
Court Of Appeals For The Third Circuit**

**OPENING BRIEF FOR
INDUSTRY PETITIONERS**

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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 the Commission’s most recent review, the agency modified or eliminated several decades-old ownership rules that substantial competitive changes in the media marketplace rendered unnecessary. No party challenged the Commission’s statutorily mandated competition analysis, nor did the Third Circuit question it on the merits. Yet the Third Circuit 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. On that ground alone, the Third Circuit vacated all the Commission’s rule changes (as well as other agency actions in these consolidated cases) and ordered the agency 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, effectively blocking review by any other court for more than 15 years.

The question presented is:

Whether under Section 202(h) the Commission must produce and consider statistical evidence or conduct an in-depth theoretical analysis regarding effects on minority and female ownership before repealing or modifying media ownership rules that it determines are no longer “necessary in the public interest as the result of competition.”

**PARTIES TO THE PROCEEDING AND
RULE 29.6 STATEMENT**

Petitioners are the Federal Communications Commission, the United States of America, Bonneville International Corporation, Connoisseur Media LLC, Fox Corporation, the National Association of Broadcasters, News Corporation, News Media Alliance, Nexstar Inc., The Scranton Times L.P., and Sinclair Broadcast Group, Inc.

Respondents that were petitioners in the Third Circuit are Prometheus Radio Project, Media Mobilizing Project, Office of Communication, Inc. of the United Church of Christ, National Association of Broadcast Employees and Technicians-Communications Workers of America, Common Cause, Multicultural Media, Telecom and Internet Council, National Association of Black Owned Broadcasters, Inc., Independent Television Group, and Free Press.

Respondent that was intervenor petitioner in the Third Circuit is Cox Media Group LLC.

Respondents that were intervenor respondents in the Third Circuit are Benton Foundation and National Organization for Women Foundation.

Pursuant to this Court's Rule 29.6, Petitioners state that:

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, a Delaware publicly held corporation, is a news, sports, and entertainment company that produces and delivers content through its primary brands, including FOX News Media, FOX Sports, FOX Entertainment, and FOX Television Stations. Based upon a review of Schedule 13D and Schedule 13G filings with the Securities and Exchange Commission, Fox Corporation is not aware of any publicly held company owning 10 percent or more of its total stock, i.e., Class A and Class B on a combined basis.

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 consisting of businesses across a range of media, including news and information services, book publishing, and digital real estate services. It has no parent company, and no publicly held company owns ten percent 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. News

Media Alliance was known as the Newspaper Association of America until September 2016. News Media Alliance has no parent company, and no publicly held company has a ten percent or greater ownership interest in the News Media Alliance.

Nexstar Inc., formerly known as 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.

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