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Supreme Court Holds That FCC Permissibly Relaxed Media Ownership Limits

Client Alert | April 1, 2021

Decided April 1, 2021

***FCC v. Prometheus Radio Project*, No. 19 1231; and**

***Nat'l Ass'n of Broadcasters v. Prometheus Radio Project*, No. 19 1241**

Today, the Supreme Court held 9-0 that the Federal Communications Commission (FCC) permissibly relaxed three decades-old rules limiting ownership of broadcast stations as part of its quadrennial regulatory review under § 202(h) of the Telecommunications Act.

Background:
Section 202(h) of the Telecommunications Act of 1996 directs the FCC 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 FCC's most recent review, it modified or eliminated three decades-old restrictions on the ownership of radio stations, television stations, and newspapers because it concluded that substantial competitive changes had rendered the prior rules unnecessary. No party challenged that competition analysis, but the Third Circuit nonetheless vacated the FCC's order because it concluded that the FCC had inadequately considered the effect of its rule changes on minority and female ownership, a factor that does not appear in Section 202(h).

Issue:
Did the FCC permissibly relax its media ownership rules under Section 202(h) based on a finding that they were no longer necessary as the result of competition?

Court's Holding:
The FCC permissibly relaxed its media ownership rules because it considered the record evidence and reasonably concluded that the rules no longer serve the public interest. The FCC further reasonably explained that its rule changes were not likely to harm minority and female ownership.

"[T]he FCC's analysis was reasonable and reasonably explained for purposes of the APA's deferential arbitrary-and-capricious standard."

Justice Kavanaugh, writing for the Court

What It Means:

- The Court's decision clears the way for consolidation in the broadcast and newspaper industry. It also eases the FCC's ability to further implement the deregulatory mandate of Section 202(h). Congress enacted that mandate in 1996

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to require the FCC to keep pace with industry developments.

- The Court applied the normal arbitrary-and-capricious standard in reviewing the FCC's order, despite the Solicitor General's call for special deference to the FCC under Section 202(h).
- The Court confirmed that the Administrative Procedure Act "imposes no general obligation on agencies to conduct or commission their own empirical or statistical studies." It further made clear that "nothing in the Telecommunications Act (or any other statute) requires the FCC to conduct its own empirical or statistical studies before exercising its discretion under Section 202(h)." If agencies lack perfect empirical data—which is "not unusual"—they generally need only make a reasonable predictive judgment based on the evidence available.
- Because the FCC reasonably assessed effects on minority and female ownership, the Court did not reach the alternative argument that Section 202(h) does not require the FCC to consider this factor at all. Justice Thomas wrote a separate concurrence to state his view that the FCC had no obligation to consider minority and female ownership.
- The Court reversed without remanding the case to the Third Circuit, a panel of which had retained jurisdiction over the case for the last 17 years.

The Court's opinion is available here.

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the Supreme Court. Please feel free to contact the following practice leaders:

Appellate and Constitutional Law Practice

Allyson N. Ho
+1 214.698.3233
aho@gibsondunn.com

Mark A. Perry
+1 202.887.3667
mperry@gibsondunn.com

Lucas C. Townsend
+1 202.887.3731
ltownsend@gibsondunn.com

Bradley J. Hamburger
+1 213.229.7658
bhamburger@gibsondunn.com

Administrative Law and Regulatory Practice

Helgi C. Walker
+1 202.887.3599
hwalker@gibsondunn.com

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