NATIONAL ASSOCIATION OF BROADCASTERS,

Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION and UNITED STATES OF AMERICA,

Respondents.

PETITION FOR REVIEW


1 NAB is a nonprofit trade association that advocates for free local television and radio stations and broadcast networks before Congress, the Federal Communications Commission ("Commission") and other agencies, and the courts. NAB and its member broadcasters actively participated in the proceedings below.

According to Section 202(h) of the Telecommunications Act of 1996, the Commission "shall" review its broadcast ownership rules every four years, "determine whether any of [those] rules are necessary in the public interest as the result of competition," and "repeal or modify any regulation it determines to be no longer in the public interest." Pub. L. No. 104-104, § 202(h), 110 Stat. 111-12. Despite these unambiguous commands, the Commission failed to complete its required 2010 quadrennial review, which began in 2009, and has failed to determine whether its existing broadcast ownership regulations serve the public interest or to "repeal or modify" any of those regulations. Instead, the Order announces that the Commission will merge its prior quadrennial review into a new 2014 proceeding, thereby thwarting its statutory obligations and kicking the proverbial can down the road. See Order ¶ 1 ("incorporating the existing 2010
record” into the new proceedings “and seeking new and additional information and data” before determining whether existing rules remain in the public interest). By refusing to complete its 2010 quadrennial review, the Commission’s Order unlawfully withholds agency action required by Congress and arbitrarily and capriciously retains burdensome regulations that are no longer in the public interest. See Dissenting Statement of Commissioner Ajit Pai (“Pai Dissent”), Order at 219-20.

Although the Commission failed to make any final determination about the need for its existing broadcast ownership rules, despite having studied them for the last five years, the Order adopts a new rule restricting joint sales agreements (“JSAs”) between broadcasters.2 Specifically, and contrary to long-standing Commission policy and practice, the agency determined that JSAs for more than 15% of a television station’s weekly advertising time will now be attributable for purposes of the Commission’s broadcast ownership rules. See Order ¶340. The Commission’s only justification for this further limitation of broadcasters’ rights is its unsubstantiated assertion that certain television JSAs “convey the incentive and potential for the broker to influence program selection and station operations.” Id. ¶350. In stark contrast, for all other shared service agreements—of which JSAs

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2 JSAs authorize a broker to sell some or all of the advertising time on a brokered station. See Order ¶342.
are a subset—the Commission expressly declined to adopt any regulation on the
ground that the Commission lacked sufficient information to “formulate sound
public policy.” Id. ¶ 327.

Further, despite a conspicuous lack of evidence of harm associated with
television JSAs or reasoned explanation for the new policy, the Order arbitrarily
and capriciously declines to grandfather existing television JSAs for more than
15% of the brokered station’s advertising time. See id. ¶ 367. Instead, the
Commission requires that broadcasters that are parties to covered JSAs unwind
those transactions within the next two years in order to comply with the
Commission’s broadcast ownership rules—an arbitrary window that closes before
the Commission can be expected to make a determination that its existing
ownership rules do, in fact, serve the public interest. See Pai Dissent, Order at 226
( observing that the Media Bureau is expected to provide a recommendation to the
Commission on ownership rules by June 30, 2016).

The Order is final agency action that has significant and immediate adverse
consequences for NAB and the broadcasters whose interests it represents.3

3 The Commission’s JSA rule constitutes final agency action subject to judicial
review. See 5 U.S.C. § 551(13). Insofar as the remainder of the Order reflects the
Commission’s refusal to act within the four-year period prescribed by Congress, it
is subject to judicial review as a failure to take a required agency action. See id.
(“agency action” includes “failure to act”); see also Norton v. S. Utah Wilderness
(Cont’d on next page)
Specifically, the Order subjects NAB’s members to onerous regulations that do not serve the public interest, in violation of Congress’s express command in Section 202(h) of the Telecommunications Act, and imposes new legal obligations that render previously legitimate transactions invalid, require costly restructuring of existing business arrangements, and restrict broadcasters’ ability to enter into advantageous joint sales agreements in the future.

NAB now seeks relief from the Order on the grounds that: (1) the Commission has withheld or unreasonably delayed the quadrennial review required by law; (2) the Order is arbitrary, capricious, and an abuse of discretion under 5 U.S.C. § 706; (3) the Order is contrary to constitutional right; and (4) the Order is otherwise contrary to law.

Accordingly, NAB requests that this Court hold unlawful, vacate, and set aside the Order and grant such additional relief as may be necessary and appropriate.

(Cont’d from previous page)

Alliance, 542 U.S. 55, 62-63 (2004) (“failure to act” includes “failure to promulgate a rule or take some decision by a statutory deadline”).
Dated: May 30, 2014

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Exhibit A
IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NATIONAL ASSOCIATION OF
BROADCASTERS,

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v.

FEDERAL COMMUNICATIONS
COMMISSION and UNITED STATES OF
AMERICA,

Respondents.

Case No. 14-______

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and D.C.
Circuit Rule 26.1, Petitioner National Association of Broadcasters ("NAB") states
as follows:

NAB is a nonprofit, incorporated association of radio and television stations.
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. As a
continuing association of numerous organizations operated for the purpose of
promoting the interests of its membership, the coalition is a trade association for
Dated: May 30, 2014

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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of May, 2014, I caused copies of the foregoing Petition for Review and Corporate Disclosure Statement to be delivered by hand to the following parties:

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