

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

PROMETHEUS RADIO PROJECT and
MEDIA MOBILIZING PROJECT,

Petitioner,

v.

FEDERAL COMMUNICATIONS
COMMISSION and UNITED STATES OF
AMERICA,

Respondents.

Case No. 16-1403
(consolidated with Case Nos.
16-1394, 16-1395, 16-1398)

MOTION TO INTERVENE

Pursuant to 28 U.S.C. § 2348, Federal Rule of Appellate Procedure 15(d), and D.C. Circuit Rule 15(b), the National Association of Broadcasters (“NAB”) respectfully moves to intervene as of right in the above-captioned case and all other cases, including any later filed cases, related to the order of the Federal Communications Commission (“Commission”) captioned, *2014 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996; 2010 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996; Promoting Diversification of Ownership in the Broadcasting Services; Rules and Policies Concerning Attribution of Joint*

Sales Agreements in Local Television Markets, Second Report and Order, FCC No. 16-107, 2016 WL 4483722 (rel. Aug. 25, 2016) (“Order”).¹

In the Order, the Commission failed to complete its statutory obligations under Section 202(h) of the Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h), 110 Stat. 111-12, to take a fresh look at its broadcast ownership rules and to repeal or modify those rules no longer necessary in the public interest in light of current competitive realities. Instead, the Commission relied largely on its conclusions in past reviews that the rules should be retained and then reaffirmed each one—with only minor modifications. The Order also sharply restricted certain joint sales agreements (“JSAs”) between television broadcasters by readopting its JSA rule—effectively tightening the local television rule. In addition, the Order imposed new reporting requirements for television shared service agreements generally, mandating that commercial television stations disclose all such agreements in the stations’ online public inspection files.

NAB is a nonprofit trade association that advocates for free local television and radio stations and broadcast networks before Congress, the Commission and other agencies, and the courts. NAB and its member broadcasters actively participated in the proceedings below. *See, e.g.*, Letter from Rick Kaplan, Gen.

¹ A synopsis of the Order was published in the Federal Register on November 1, 2016. *See* 81 Fed. Reg. 76,220.

Counsel & Exec. Vice President Legal & Regulatory Affairs, Nat'l Ass'n of Broadcasters, to Marlene H. Dortch, Sec'y, Fed. Commc'ns Comm'n (July 19, 2016), *available at* <https://ecfsapi.fcc.gov/file/1071905276260/OwnershipExParte8VoicesStudy071916nm.pdf>; Letter from Rick Kaplan, Gen. Counsel & Exec. Vice President Legal & Regulatory Affairs, Nat'l Ass'n of Broadcasters, to Marlene H. Dortch, Sec'y, Fed. Commc'ns Comm'n (June 6, 2016), *available at* <https://ecfsapi.fcc.gov/file/60002095464.pdf>; *Reply Comments of the National Ass'n of Broadcasters*, MB Docket Nos. 14-50, 09-182, 07-294, 04-256 (Sept. 8, 2014), *available at* <https://ecfsapi.fcc.gov/file/7521829331.pdf>; *Comments of the National Ass'n of Broadcasters*, MB Docket Nos. 14-40, 09-182, 07-294, 04-256 (Aug. 6, 2014), *available at* <https://ecfsapi.fcc.gov/file/7521751016.pdf>.

The Order will have significant and immediate adverse consequences for NAB and the broadcasters whose interests it represents because it subjects NAB's members to onerous regulations that do not serve the public interest, and imposes new legal obligations and burdens in violation of Section 202(h) and the Administrative Procedure Act. NAB initially filed a petition for review in this Court that challenged the Order on these grounds (No. 16-1394), but today filed a motion for voluntary dismissal because it is seeking reconsideration by the Commission to the extent the Order failed to repeal or loosen the broadcast ownership rules. Nonetheless, petitioners in the above-captioned case (as well as

petitioners in consolidated Case No. 16-1398) challenge the Order on the basis that the Commission *did not go far enough* in certain respects, and seek to have the Order invalidated on grounds that could result in even more restrictive broadcast ownership rules and further regulation of shared service arrangements and other aspects of the broadcast industry. *See* Pet. for Review by Prometheus Radio Project & Media Mobilizing Project (Nov. 3, 2016) (Doc. 1647793); Pet. for Review by Multicultural Media, Telecom & Internet Council, Inc. & Nat’l Ass’n of Black-Owned Broadcasters (Nov. 15, 2016) (Doc. 1646418). Invalidation of the Order on these bases would separately and independently harm NAB and its members.

Accordingly, NAB is a “party in interest” entitled to mandatory intervention in this appeal because it participated “in the proceeding before the agency,” and its “interests will be affected” by this Court’s disposition on the Order. 28 U.S.C. § 2348. NAB respectfully requests that this Court grant its motion to intervene as of right in the above-captioned case and in all other cases with which this case has been or may hereafter be consolidated, and grant all other relief as may be just and proper.

Dated: December 2, 2016

Respectfully submitted,

Rick Kaplan
Jerianne Timmerman
NATIONAL ASSOCIATION OF
BROADCASTERS
1771 N Street, N.W.
Washington, D.C. 20036
Telephone: (202) 429-5430

/s/ Helgi C. Walker
Helgi C. Walker
Counsel of Record
Ashley S. Boizelle
Rebekah Ricketts
Lindsay S. See
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Ave., N.W.
Washington, D.C. 20036
Telephone: (202) 955-8500
Facsimile: (202) 467-0539

*Attorneys for Petitioner National
Association of Broadcasters*

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of December, 2016, I caused a copy of the foregoing Motion to Intervene to be served with the Clerk of the Court via the Court's CM/ECF filing system. I further certify that service was accomplished on the parties listed below via the Court's CM/ECF system.

Andrew Jay Schwartzman
Drew Simshaw
Georgetown University Law Center
600 New Jersey Ave., N.W., Room 312
Washington, D.C. 20001

*Counsel for Prometheus Radio Project
and Media Mobilizing Project*

David W. D'Alessandro
Dennis Lane
STINSON LEONARD STREET LLP
1775 Pennsylvania Ave., N.W.
Washington, D.C. 20006

*Counsel for Multicultural Media,
Telecom and Internet Council &
National Association of Black Owned
Broadcasters, Inc.*

Robert Allen Long, Jr.
Kurt Wimmer
Kevin King
COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street, N.W.
Washington, D.C. 20001

Counsel for News Media Alliance

Jacob M. Lewis
Richard Kiser Welch
James M. Carr
Federal Communications Commission
445 12th Street, S.W., Room 8-A741
Washington, D.C. 20554

*Counsel for Federal
Communications Commission*

Nickolai G. Levin
Robert B. Nicholson
U.S. Department of Justice
Antitrust Division, Appellate Section
950 Pennsylvania Ave., N.W.,
Room 3224
Washington, D.C. 20530

Counsel for United States of America

/s/ Helgi C. Walker

Helgi C. Walker

GIBSON, DUNN & CRUTCHER LLP

1050 Connecticut Ave., N.W.

Washington, D.C. 20036