

NOV 15 2016

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
FILED NOV 15 2016
CLERK

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

Multicultural Media, Telecom and)
Internet Council, Inc.)
and National Association of)
Black-Owned Broadcasters,)
Petitioners,)
v.)
Federal Communications Commission,)
and United States of America,)
Respondents.)

No. 16-1398

PETITION FOR REVIEW

Pursuant to 47 U.S.C. § 402(a), 28 U.S.C. §§ 2342(1) and 2344, and Fed. Rule App. P. 15(a), Multicultural Media, Telecom and Internet Council, Inc. (“MMTC”) and National Association of Black-Owned Broadcasters (“NABOB”) petition for review of the Federal Communications Commission’s (“FCC”), *Second Report and Order, 2014 Quadrennial Regulatory Review*, 31 FCC Rcd 9864 (2016), 81 Fed. Reg. 76220 (Nov. 1, 2016)(“Second Report and Order”).

Venue is proper in this Court under 28 U.S.C. § 2343 because MMTC and NABOB both have their principal offices in Washington, DC.

The Second Report and Order (1) concludes the FCC 2010 Quadrennial Review and its 2014 Quadrennial Review of the FCC’s broadcast ownership rules, as mandated by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110

Stat. 56 (1996) and (2) addresses the Third Circuit’s remand in *Prometheus Radio Project v. FCC*, 824 F.2d 33 (3rd Cir. 2016)(“*Prometheus III*”), and over which that Court retained jurisdiction. 824 F.3d at 60.¹

Petitioners seek review of the FCC’s non-action regarding a proposal to “extend the cable procurement requirements to broadcasters and other regulated communications industries.” Second Report and Order, 81 Fed. Reg. at 76253 ¶ 197. Like many other important issues regarding ownership diversity related to the several industries subject to FCC jurisdiction, the extension of the cable procurement requirements beyond cable has lingered unresolved for many years. As the court noted in *Prometheus III*, “[t]welve years have passed since we first took up challenges to the broadcast ownership rules and diversity initiatives” of the FCC, and still in “key areas, however, it has fallen short.” 824 F.3d at 37. In particular, the court found “the FCC has unreasonably delayed action on its definition of an “eligible entity”—a term it has attempted to use as a lynchpin for initiatives to promote minority and female broadcast ownership—and we remand with an order for it to act promptly.” *Id.*

Petitioners here challenge an aspect of the Second Report and Order that “relates in many ways to the eligible entity discussion,” *id.* at 50, n. 11, namely,

¹ Petitioners would not oppose transfer of the instant petition to the Third Circuit for consolidation with the petition for review of the Second Report and Order filed in *Prometheus Radio Project v. FCC*, No. 16-4046 (3d Cir. filed Nov. 3, 2016).

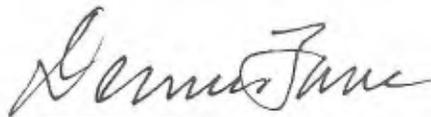
certain diversity-related proposals, and in particular one that would extend the cable procurement rule to broadcast and other regulated communications industries. *See* 47 C.F.R. § 76.75(e)(1)(cable procurement rule). Despite representations to the Third Circuit, that the FCC Chairman would address this issue in a manner that would allow it to be resolved in the Second Report and Order, and the court’s “expectation that the Commission will meet its proffered deadline,” *id.*, the FCC has once again punted the issue, stating it “finds that merit existing in exploring whether, and if so, how, to extend the cable procurement requirements to the broadcasting industry. Therefore, the Commission will evaluate the feasibility of adopting similar procurement rules for the broadcasting industry.” Second Report and Order at ¶ 197.

Petitioners seek review of this ruling both as arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with the law and as agency action unreasonably delayed or withheld. The cable procurement rule was created in response to Section 634(d)(2)(E) of the Cable Communications Policy Act of 1984, Pub. L. 98549, 98 Stat. 2779, 2798, and has helped, as intended by Congress, to create opportunities for women and minorities in numerous aspects of the cable industry. Petitioners submit that the FCC had sufficient authority and information on which to extend the rule to the broadcast and other regulated telecommunications industries to promulgate such rules at the time of the Second

Report and Order. The failure to take such action, and instead push the matter off for further evaluation unreasonably delays resolution and is otherwise arbitrary and capricious.

Petitioners seek a ruling by this Court that remands the extension of the cable procurement rule to broadcasting and other regulated industries with instruction to promulgate and to finalize such rules by specific dates. Petitioners will also ask this Court to retain jurisdiction, and to require periodic progress reports from the Commission on this issue.

Respectfully submitted,



David D'Alessandro
Dennis Lane
Stinson Leonard Street LLP
1775 Pennsylvania Avenue, NW, Suite 800
Washington, D.C. 20006
(202) 785-9100
(202) 785-9163 (fax)
david.dalessandro@stinson.com
dennis.lane@stinson.com

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

Dated: November 15, 2016

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

Multicultural Media, Telecom and)	
Internet Council, Inc.)	
and National Association of)	
Black-Owned Broadcasters,)	
Petitioners,)	
v.)	No. _____
)	
Federal Communications Commission,)	
and United States of America,)	
Respondents.)	

CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. Rule App. P. 26.1 and this Court’s Rule 26.1, Petitioner Multicultural Media, Telecom and Internet Council, Inc. (“MMTC”) states:

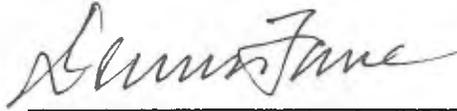
MMTC is a national not-for-profit organization dedicated to promoting and preserving equal opportunity and civil rights in the mass media, telecommunications, and broadcast industries. It has no parent company and has not issued any shares or debt securities to the public; thus no publicly held company owns ten percent or more of its stock.

Pursuant to Fed. Rule App. P. 26.1 and this Court’s Rule 26.1, Petitioner National Association of Black-Owned Broadcasters (“NABOB”) states:

NABOB is a national not-for-profit organization dedicated to increasing ownership of broadcast radio and television stations and other media by African

Americans and other people of color. 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.

Respectfully submitted,



David D'Alessandro
Dennis Lane
Stinson Leonard Street LLP
1775 Pennsylvania Avenue, NW, Suite 800
Washington, D.C. 20006
(202) 785-9100
(202) 785-9163 (fax)
david.dalessandro@stinson.com
dennis.lane@stinson.com

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

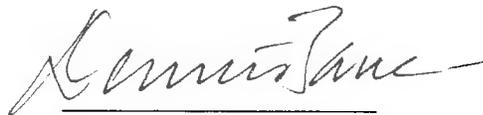
Dated: November 15, 2016

CERTIFICATE OF SERVICE

I hereby certify, that this 15th day of November, 2016, I caused copies of the foregoing Petition for Review and Corporate Disclosure Statement to be served via first-class mail to:

Howard Symons
General Counsel
Federal Communications Commission
445 12th Street, SW
Room 8-A741
Washington, DC 20554

The Honorable Loretta Lynch
Attorney General
U.S. Department of Justice
950 Pennsylvania Ave. NW
Washington, DC 20530



Dennis Lane