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# Hughes Hubbard & Reed

## Firm Contributes to Supreme Court Triumph for FCC

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**April 9, 2021** – The firm represented the International Center for Law & Economics as an amicus curiae that contributed to a critical Supreme Court victory allowing the Federal Communications Commission (FCC) to relax restrictions on local media ownership.

On April 1, the Supreme Court unanimously reversed a decision by the U.S. Court of Appeals for the Third Circuit that had blocked an FCC order issued in 2017 that eased longstanding rules prohibiting ownership of two or more full-power TV stations by one company in any local market.

In its September 2019 decision, the Third Circuit directed the FCC to examine how the proposed reforms would affect broadcast ownership by women and minorities. The Third Circuit's ruling was the third time since 2001 that it had blocked FCC efforts to reform station ownership rules, on various grounds.

"In analyzing whether to repeal or modify its existing ownership rules, the FCC considered the record evidence and reasonably concluded that the three ownership rules at issue were no longer necessary to serve the agency's public interest goals of competition, localism, and viewpoint diversity, and that the rule changes were not likely to harm minority and female ownership," Justice Brett Kavanaugh wrote for the court.

The case was brought by Philadelphia-based Prometheus Radio Project, a public interest group opposing media consolidation. Prometheus, along with several other consumer advocacy groups, argued that the FCC's decision was arbitrary and capricious under the Administrative Procedure Act (APA).

In May 2020, a month after the National Association of Broadcasters (NAB) urged the high court to review the Third Circuit's decision, the firm's Antitrust team filed its amicus curiae brief supporting a petition for a writ of certiorari by the NAB.

"These outdated regulations have already contributed to an 'extinction-level crisis' in the newspaper industry, and the spread of that crisis to local broadcasters in smaller markets is imminent," the brief stated. "Consequently, the

panel's order will cause serious and immediate injury to the public's First Amendment interest in preserving a strong local free press."

In October, the high court accepted requests from both the FCC and the NAB to consider whether moves to relax anti-consolidation controls among radio and TV stations could be appropriate.

Justice Kavanaugh adopted HHR's position and struck down Prometheus's contention, noting that the APA imposes no general obligation on agencies to conduct or commission their own empirical and statistical studies. "In light of the sparse record on minority and female ownership and the FCC's findings with respect to competition, localism, and viewpoint diversity, we cannot say that the agency's decision to repeal or modify the ownership rules fell outside the zone of reasonableness for the purposes of the APA," Justice Kavanaugh concluded in the 12-page ruling.

In a concurring opinion, Justice Clarence Thomas added that the Third Circuit had no authority to require the FCC to consider minority and female ownership in the first place. "So in future reviews, the FCC is under no obligation to do so," he wrote.

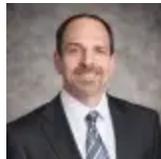
The decision garnered coverage in [The New York Times](#), [Bloomberg News](#), [Reuters](#), [The Hollywood Reporter](#), [Broadcasting & Cable](#), [Law360](#) and other news outlets.

Bill Kolasky and Philip Giordano were the lead authors of the amicus brief, with assistance from Kristin Millay, James Canfield and Nicole Sarrine. Helgi Walker, a partner at Gibson Dunn & Crutcher, argued the case on behalf of the NAB.

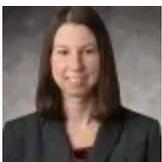
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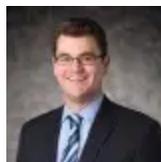
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