



Federal Communications Commission
Washington, D.C. 20554

February 17, 2004

Ms. Marcia M. Waldron, Clerk
United States Court of Appeals for the Third Circuit
21400 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106-1790

Re: Prometheus Radio Project *et al.* v. FCC & USA, No. 03-3388
(and consolidated cases) (argued February 11, 2004)

Dear Ms. Waldron:

Pursuant to Fed. R. App. P. 28(j), this letter is to advise the Court of the decision in *Cellco Partnership v. FCC*, No. 02-1262 (D.C. Cir. Feb. 13, 2004) (copy attached), upholding the FCC's interpretation of "necessary in the public interest" under the biennial review provisions of Section 11 of the Communications Act, 47 U.S.C. § 161. The *Cellco* decision holds, among other things, that the FCC reasonably interpreted the phrase "necessary in the public interest" to mean "advanc[ing] a legitimate regulatory objective" and that the FCC may rely on "predictive judgment or properly-supported inferences in determining to retain a regulation." Slip Op. 12, 16. The decision thus directly supports the FCC's interpretation of the same statutory phrase in Section 202(h) of the Telecommunications Act of 1996, discussed at pp. 23-27 of the government's brief in this case.

I would appreciate it if you would distribute the enclosed additional copies of this letter and its attachment to the members of the panel (Scirica, C.J., Ambro, Fuentes, JJ.) before whom this case was argued.

Sincerely,

John A. Rogovin
General Counsel

cc: Counsel of record (as shown on attached certificate)

Attachment