

January 28, 2004



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 and United States*
No. 03-3388

Dear Ms. Waldron:

On behalf of the Citizen Petitioners and Intervenors, the Network Affiliated Stations Alliance, *et al.*, and Capitol Broadcasting Corp. I wish to advise the Court that they plan to divide the 45 minutes of argument time allocated to them by this Court's January 8, 2004 *Order* as follows:

***If the Court decides not to hear oral argument on the national television ownership cap:*¹**

1. Andrew Jay Schwartzman plans to argue for 17 minutes on behalf of the Citizen Petitioners and Intervenors. He will address the standard of review and the overarching issues the case presents with respect to the public interest standard of the Communications Act and the Administrative Procedure Act.
2. Glenn Manishin plans to argue for 7 minutes on behalf of the Citizen Petitioners and Intervenors to address the Commission's analysis of the record with respect to competition and, especially, the Commission's "diversity index."
3. Angela J. Campbell plans to argue for 16 minutes on behalf of the Citizen Petitioners and Intervenors to address each of the rules still at issue, including the local television, local radio and cross-media ownership rules and the UHF Discount.
4. Jerome Marcus plans to argue for 5 minutes on behalf of Capitol Broadcasting Corp. to address the UHF Discount.

¹By letter dated January 27, 2004, the Court directed counsel to file letter briefs by noon on February 2, 2004, commenting on the effect of the *Consolidated Appropriations Act of 2004* on petitioners' challenges to the national television ownership rule and the other ownership rules at issue in this appeal. The *Consolidated Appropriations Act of 2004*, among other things, directs the Federal Communications Commission to set the national television ownership cap at 39 percent of television households nationwide. As a result of this legislation, it appears to be unnecessary for this Court to consider petitioners' challenges to the Commission's decision to set the national television ownership cap at 45 percent of television households.

If the Court decides to hear oral argument on the national television ownership cap:

1. Andrew Jay Schwartzman plans to argue for 13 minutes on behalf of the Citizen Petitioners and Intervenor. He will address the standard of review and the overarching issues the case presents with respect to the public interest standard of the Communications Act and the Administrative Procedure Act.
2. Robert A. Long plans to argue for 12 minutes on behalf of the Network Affiliated Stations Alliance, the ABC Television Affiliates Association, the CBS Television Network Affiliates Association, and the NBC Television Affiliates concerning the national television ownership cap.
3. Glenn Manishin plans to argue for 4 minutes on behalf of the Citizen Petitioners and Intervenor to address the Commission's analysis of the record with respect to competition and, especially, the Commission's "diversity index."
4. Angela J. Campbell plans to argue for 12 minutes on behalf of the Citizen Petitioners and Intervenor to address each of the rules still at issue, including issues relating to the local television, local radio and cross-media ownership rules and the UHF Discount.
5. Jerome Marcus plans to argue for 4 minutes on behalf of Capitol Broadcasting Corp. to address the UHF Discount.

The above allocations are based on the understanding that the Court's January 8, 2004 *Order* allocates time only with respect to the opening arguments, and that such rebuttal as the Court may thereafter wish to hear will be in addition to the time amounts specified in the *Order*.

Respectfully submitted,

Andrew Jay Schwartzman

CERTIFICATE OF SERVICE

I, Andrew Jay Schwartzman, certify that, on this 28th day of January, 2004, I caused to be served upon the parties listed below by electronic mail, and by first-class mail, postage prepaid, copies of the foregoing *Letter* to the following:

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