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# [***Prometheus Radio Project v. FCC***](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5RT2-FTF1-JJ1H-X4KV-00000-00&context=)

United States Court of Appeals for the Third Circuit

February 7, 2018, Decided

Nos. 17-1107 & 18-1092, No. 18-1167

**Reporter**

2018 U.S. App. LEXIS 5512 \*

Prometheus Radio Project et al. v. Federal Communications Commission;In re: Prometheus Radio Project and Media Mobilizing Project, Petitioners

**Prior History:** **[\*1]**(Related to Agency Nos. FCC 16-107 and 17-156).

[*In re 2014 Quadrennial* ***Regulatory*** *Review, 31 F.C.C.R. 9864, 2016 FCC LEXIS 2887 (F.C.C., Aug. 25, 2016)*](https://advance.lexis.com/api/document?collection=administrative-materials&id=urn:contentItem:5KS2-8490-01KR-93RK-00000-00&context=)

**Core Terms**

incubator, mandamus, exact

**Counsel:** For Prometheus Radio Project, Media Mobilizing Project, Petitioners (17-1107): Angela J. Campbell, Esq., Institute for Public Representation, Washington, DC; Andrew J. Schwartzman, Esq., Georgetown University Law Center, Washington, DC.

For Federal Communications Commission, Respondent (17-1107): James M. Carr, Esq., Matthew J. Dunne, Esq., David M. Gossett, Esq., Jacob M. Lewis, Esq., William Scher, Esq., Howard J. Symons, Esq., Richard K. Welch, Esq., Federal Communications Commission, Washington, DC; Loretta Lynch, Esq., United States Department of Justice, Washington, DC.

For United States of America, Respondent (17-1107): Nickolai Gilford Levin, Attorney, United States Department of Justice, ***Antitrust*** Division, Washington, DC; Loretta Lynch, Esq., United States Department of Justice, Office of Immigration Litigation, Washington, DC.

For Benton Foundation, Common Cause, Media Council Hawaii, National Association of Broadcast Employees And Technicians Communications Workers of America, National Organization For Women Foundation, Office of Communication of The United Church of Christ Inc, Intervenor Respondents (17-1107): Angela J. Campbell,**[\*2]** Esq., Institute for Public Representation, Georgetown Law, Washington, DC.

For National Association of Broadcasters, Intervenor petitioner (17-1107): Helgi C. Walker, Esq., Gibson Dunn & Crutcher, Washington, DC.

For Cox Media Group Llc, Intervenor petitioner (17-1107): David E. Mills, Esq., Cooley, Washington, DC; Angela J. Campbell, Esq., Institute for Public Representation, Georgetown Law, Washington, DC.

For Multicultural Media Telecom And Internet Council, National Association of Black Owned Broadcasters, Intervenors - Intervenor petitioners (18-1092): David D'Alessandro, Esq., Dennis Lane, Esq., Stinson Leonard Street, Washington, DC.

For Prometheus Radio Project, Media Mobilizing Project, In re: PROMETHEUS RADIO PROJECT (18-1092, 18-1167), Petitioners: Angela J. Campbell, Esq., James T. Graves, Institute for Public Representation, Washington, DC; Chris M. Laughlin, Esq., Andrew J. Schwartzman, Esq., Georgetown University Law Center, Washington, DC; Cheryl A. Leanza, Best Best & Krieger, Washington, DC.

For Federal Communications Commission (18-1092, 18-1167), Respondent (18-1092): Matthew J. Dunne, Esq., David M. Gossett, Esq., Thomas M. Johnson Jr., Esq., Jacob M. Lewis, Esq., William**[\*3]** Scher, Esq., Richard K. Welch, Esq., Federal Communications Commission, Washington, DC; Jeff Sessions, Esq., United States Department of Justice, Office of Immigration Litigation, Washington, DC.

For United States of America, Respondent (18-1092): Thomas M. Johnson Jr., Esq., Federal Communications Commission, Washington, DC; Nickolai Gilford Levin, Attorney, United States Department of Justice, Washington, DC; Jeff Sessions, Esq., United States Department of Justice, Office of Immigration Litigation, Washington, DC.

For Bonneville International Corp, Intervenor - Intervenor Respondent (18-1092): Craig E. Gilmore, Esq., Kenneth E. Satten, Esq., Wilkinson Barker Knauer, Washington, DC.

For Connoisseur Media Llc, Intervenor - Intervenor Respondent (18-1092): David H. Solomon, Esq., Wilkinson Barker Knauer, Washington, DC.

For National Association of Broadcasters (18-1092, 18-1167), Intervenor - Intervenor Respondent (18-1092): Andrew G.I. Kilberg, Esq., Helgi C. Walker, Esq., Gibson Dunn & Crutcher, Washington, DC.

For News Corp, Intervenor - Intervenor Respondent (18-1092): Sally A. Buckman, Esq., Paul A. Cicelski, Esq., S. Jenell Trigg, Esq., Lerman Senter, Washington, DC.

For News Media**[\*4]** Alliance, Intervenor - Intervenor Respondent (18-1092): Kevin F. King, Esq., Robert A. Long Jr., Esq., Covington & Burling, Washington, DC.

For Nexstar Broadcasting Inc, Intervenor - Intervenor Respondent (18-1092): Eve Reed, Esq., Wiley Rein, Washington, DC.

For Sinclair Broadcast Group Inc, Intervenor - Intervenor Respondent (18-1092): Jeetander T. Dulani, Esq., Pillsbury Winthrop Shaw Pittman, Washington, DC.

For Twenty First Century Fox Inc, Intervenor - Intervenor Respondent (18-1092): Rafael Reyneri, Esq., Mace J. Rosenstein, Esq., Andrew Soukup, Esq., Covington & Burling, Washington, DC.

For News Media Alliance, Not Party - Proposed Intervenor Respondent (18-1167): Kevin F. King, Esq., Robert A. Long Jr., Esq., Covington & Burling, Washington, DC.

For Sinclair Broadcast Group Inc, Not Party - Proposed Intervenor Respondent (18-1167): Jeetander T. Dulani, Esq., Pillsbury Winthrop Shaw Pittman, Washington, DC.

For Twenty First Century Fox Inc, Not Party - Proposed Intervenor Respondent (18-1167): Rafael Reyneri, Esq., Mace J. Rosenstein, Esq., Andrew Soukup, Esq., Covington & Burling, Washington, DC.

For Bonneville International Corp, Not Party - Proposed Intervenor Respondent (18-1167):**[\*5]** Craig E. Gilmore, Esq., Kenneth E. Satten, Esq., Wilkinson Barker Knauer, Washington, DC.

For Nexstar Broadcasting Inc, Not Party - Proposed Intervenor Respondent (18-1167): Eve Reed, Esq., Wiley Rein, Washington, DC.

For Connoisseur Media Llc, Not Party - Proposed Intervenor Respondent (18-1167): David H. Solomon, Esq., Wilkinson Barker Knauer, Washington, DC.

For News Corp, Not Party - Proposed Intervenor Respondent (18-1167): Sally A. Buckman, Esq., Paul A. Cicelski, Esq., S. Jenell Trigg, Esq., Lerman Senter, Washington, DC.

**Judges:** Present: AMBRO, SCIRICA and FUENTES, Circuit Judges.

**Opinion by:** Thomas L. Ambro

**Opinion**

**ORDER**

The emergency petition for writ of mandamus is denied as Petitioners have not satisfied the exacting standard for obtaining such relief. *See* [*In re: Howmedica Osteonics Corp., 867 F.3d 390, 401 (3d Cir. 2017)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5P81-4W81-F04K-K030-00000-00&context=) (observing that a writ of mandamus "may issue only if the petitioner shows (1) a clear and indisputable abuse of discretion or [] error of law, (2) a lack of an alternate avenue for adequate relief, and (3) a likelihood of irreparable injury.") (citation and internal quotation marks omitted).

The Court notes that the exact design of the FCC's new incubator program is subject to public comment through April 9, 2018. As such, the petitions for review pending**[\*6]** at Nos. 17-1107 and 18-1092 shall be stayed for a period of 6 months from the date of this Order. The FCC is hereby directed to file a report on or before August 6, 2018 regarding the status of the incubator program.

By the Court,

/s/ Thomas L. Ambro

Circuit Judge

Dated: February 7, 2018

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