

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

National Association of Broadcasters,)	
Petitioner,)	
)	
v.)	No. 14-1072
)	
Federal Communications Commission)	
and United States of America,)	
Respondents.)	
National Association of Broadcasters,)	
Petitioner,)	
)	
v.)	No. 14-1092 (and
)	consolidated cases)
Federal Communications Commission)	
and United States of America,)	
Respondents.)	

**RESPONSE OF FEDERAL COMMUNICATIONS COMMISSION
TO CONTINGENT MOTION TO CONSOLIDATE**

On June 11, 2014, several movants for intervention in Case No. 14-1072 filed a contingent motion to consolidate that case with some other cases that have already been consolidated, including Case No. 14-1092. In Case No. 14-1072, the National Association of Broadcasters (“NAB”) seeks review of a March 2014 Public Notice issued by the FCC’s Media Bureau.¹ In Case No. 14-1092, NAB petitions for review of an April 2014 order by the FCC concerning the agency’s

¹ Public Notice, *Processing of Broadcast Television Applications Proposing Sharing Arrangements and Contingent Interests*, DA 14-330 (released March 12, 2014) (“*Public Notice*”).

review of its media ownership rules.² NAB's petition in Case No. 14-1092 has already been consolidated with other petitions for review of the *April 15 Order* filed by Howard Stirk Holdings (No. 14-1090), Nexstar Broadcasting (No. 14-1091), and Prometheus Radio Project (No. 14-1113). Prometheus is one of the parties that filed the motion to consolidate Case No. 14-1072 with these cases.

The FCC has filed a motion to dismiss Case No. 14-1072. As we explain in that motion, NAB's petition for review of the Media Bureau's *Public Notice* should be dismissed because the Court lacks jurisdiction to review action taken by FCC staff pursuant to delegated authority. *See* 47 U.S.C. § 155(c)(7); *Int'l Telecard Ass'n v. FCC*, 166 F.3d 387 (D.C. Cir. 1999); *Richman Bros. Records, Inc. v. FCC*, 124 F.3d 1302 (D.C. Cir. 1997). If the Court grants the motion to dismiss Case No. 14-1072, the motion to consolidate that case with the petitions for review of the FCC's *April 15 Order* will become moot.

In the event that the Court does not dismiss Case No. 14-1072, the FCC believes that the contingent motion to consolidate should be granted. Case No. 14-1072 and Case No. 14-1092 involve the same parties (NAB, the FCC, and the United States). Moreover, these cases (as well as the other cases that have already been consolidated with Case No. 14-1092) involve related issues concerning the

² *2014 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, FCC 14-28 (released April 15, 2014) (“*April 15 Order*”).

review of broadcast transactions under the FCC's media ownership rules. Indeed, although NAB opposes consolidation, it admits that there is "some overlap between the *April 15 Order* and the *Public Notice*" insofar as "both address broadcast television sharing arrangements." NAB Opposition to Contingent Motion to Consolidate, filed June 19, 2014, at 10. And it is settled practice in this Court that "cases involving essentially the same parties or the same, similar, or related issues, may be consolidated." D.C. Cir. Handbook of Practice and Internal Procedures 23 (2013). Therefore, in the event that Case No. 14-1072 is not

dismissed, we agree with the movants that consolidation of all these cases would serve the interest of judicial economy and efficiency.

Respectfully submitted,

Jonathan B. Sallet
General Counsel

David M. Gossett
Acting Deputy General Counsel

Jacob M. Lewis
Associate General Counsel

/s/ James M. Carr
James M. Carr
Counsel

Federal Communications Commission
Washington, D.C. 20554
(202) 418-1740

June 24, 2014

14-1072

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

National Association of Broadcasters, Petitioner

v.

**Federal Communications Commission and the
United States of America, Respondents**

CERTIFICATE OF SERVICE

I, James M. Carr, hereby certify that on June 24, 2014, I electronically filed the foregoing Response Of Federal Communications Commission To Contingent Motion To Consolidate with the Clerk of the Court for the United States Court of Appeals for the D.C. Circuit by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

Helgi C. Walker
Gibson, Dunn & Crutcher LLP
1050 Connecticut Ave., N.W.
Washington, D.C. 20036
Counsel for: NAB

Jane E. Mago
Jerianne Timmerman
National Association of Broadcasters
1771 N Street, N.W.
Washington, D.C. 20036
Counsel for: NAB

Robert J. Wiggers
Kristen C. Limarzi
U.S. Department of Justice
Antitrust Division, Room 3224
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001
Counsel for: USA

Angela J. Campbell
Andrew Jay Schwartzman
Institute for Public Representation
Georgetown University Law Center
600 New Jersey Avenue, NW
Washington, D.C. 20001
Counsel for Free Press, et al.

/s/ James M. Carr