

ONE HUNDRED SIXTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**

COMMITTEE ON ENERGY AND COMMERCE

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October 22, 2019

The Honorable Ajit V. Pai  
Chairman  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

Dear Chairman Pai:

On September 23, 2019, the United States Court of Appeals for the Third Circuit (Court) rejected the Federal Communications Commission's (FCC) attempt to deregulate the broadcast market by eliminating protections that would prohibit greater consolidation.<sup>1</sup> The Court made clear that the FCC had not adequately considered the effects the elimination of those necessary protections would have on ownership diversity. Despite the clear rebuke, the very next day, the FCC's Media Bureau disregarded the Court's decision and blessed further television consolidation in the Sioux Falls, South Dakota market.<sup>2</sup> Given the Court's ruling, we have concerns about whether the Order violates the FCC's Rules.

As you are aware, Gray Television is the licensee of KSFY-TV, the second-rated station in the Sioux Falls market, and Red River Broadcast Company is the licensee of KDLT-TV, the third-rated station in that market. Prior to the FCC's roll back of the media consolidation protections at issue, this combination would be a clear violation of the "Top Four" rule, which prohibits one entity from owning two of the top four stations in a given market. Now that the roll back has been struck down, the FCC has an obligation to reexamine its media ownership rules.

In allowing this transaction to go forward, the FCC undermines the rule of law and the decision of the Third Circuit. While the FCC acknowledged the Court overturned its attempts at deregulating the broadcast market, it nonetheless reviewed the license transfer as if the Court had

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<sup>1</sup> *Prometheus Radio Project v. FCC*, No. 17-1107 et al., slip op. (3rd Cir. Sept. 23, 2019) (Prometheus Decision).

<sup>2</sup> *Application of Red River Broadcast (Assignor) and Gray Television Licensee, LLC (Assignee)*, Memorandum Opinion and Order, DA 19-943 (Sept. 24, 2019).

not struck down its roll back of media protections. The FCC argued that it does not have to comply with the Court's decision because, while the Court issued its decision, the Court's mandate has not yet been issued. The FCC's technical arguments about why it does not have to comply with the Court's decision seem highly suspect, at best, and an intentional flouting of the rule of law at worst.

In light of the FCC's ignoring of the Court's decision and this Committee's commitment to ensuring a diverse marketplace, we seek answers to the questions below.

1. Will the FCC reconsider Gray Television's acquisition of KDLT-TV once the Court's mandate has been issued?
2. Did the FCC seek the opinion of the Court, or the Office of General Counsel, regarding the legality of relying on the FCC rules that have been struck down by the *Prometheus Radio Project v. FCC* Decision? If so, please provide all written communications to that effect in the FCC's possession.
3. Is the FCC currently reviewing transactions that are seeking waivers of the broadcast ownership rules? If so, please provide the Committee the details of those transactions.
4. Is the FCC currently reviewing transactions that would require a waiver to comply with the broadcast ownership rules in place either prior to or after the *Prometheus Radio Project v. FCC* Decision? If so, please provide the Committee the details of those transactions.

We appreciate your attention to this important matter. Please provide your responses to the questions above by November 12, 2019. Should you have any questions, please contact Gerald Leverich of the Committee staff at (202) 225-3641.

Sincerely,



Frank Pallone, Jr.  
Chairman



Mike Doyle  
Chairman  
Subcommittee on Communications  
and Technology