

373 F.3d 372, *; 2004 U.S. App. LEXIS 12720, **

**PROMETHEUS RADIO PROJECT vs. FEDERAL
COMMUNICATIONS COMMISSION; UNITED STATES OF
AMERICA,**

Nos. 03-3388, 03-3577, 03-3578, 03-3579, 03-3580, 03-3581, 03-3582, 03-
3651, 03-3665, 03-3675, 03-3708, 03-3894, 03-3950, 03-3951, 03-4072, 03-
4073 & 04-1956

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

373 F.3d 372; 2004 U.S. App. LEXIS 12720

**February 11, 2004, Argued
June 24, 2004, Filed**

SUBSEQUENT HISTORY: US Supreme Court certiorari denied by *Media Gen., Inc. v. FCC*, 2005 U.S. LEXIS 4807 (U.S., June 13, 2005)

US Supreme Court certiorari denied by *Newspaper Ass'n of Am. v. FCC*, 2005 U.S. LEXIS 4810 (U.S., June 13, 2005)

US Supreme Court certiorari denied by *Tribune Co. v. FCC*, 2005 U.S. LEXIS 4809 (U.S., June 13, 2005)

US Supreme Court certiorari denied by *Nat'l Ass'n of Broadcasters v. FCC*, 2005 U.S. LEXIS 4808 (U.S., June 13, 2005)

US Supreme Court certiorari denied by *FCC v. Prometheus Radio Project*, 2005 U.S. LEXIS 4811 (U.S., June 13, 2005)

US Supreme Court certiorari denied by *Sinclair Broad. Group, Inc. v. FCC*, 2005 U.S. LEXIS 4812 (U.S., June 13, 2005)

PRIOR HISTORY: [**1] On Petition for Review of An Order of the Federal Communications Commission. (FCC No. 03-127).

Prometheus Radio Project v. FCC, 2003 U.S. App. LEXIS 18390 (3d Cir., Sept. 3, 2003)

DISPOSITION: Affirmed in part and remanded in part.

[373 F.3d at 430]

3. Attribution of JSAs is constitutional.

We also disagree with the Deregulatory Petitioners' suggestion that the attribution of JSAs "raises serious constitutional concerns" ⁷⁵ under the *Fifth Amendment's Takings Clause*. Contracts such as JSAs are protected property interests under the *Fifth Amendment*, see *United States Trust Co. of N.Y. v. New Jersey*, 431 U.S. 1, 19 n.16, 52 L. Ed. 2d 92, 97 S. Ct. 1505 (1977), but here the Commission has not invalidated or interfered with any contracts. In deciding to attribute JSAs, it has simply decided that stations subject to JSAs should, in certain circumstances, count toward the regulatory limit in determining how many stations the brokering entity may own in a market. Moreover, station owners have no vested right in the continuation of any particular regulatory scheme. *Folden v. United States*, 56 Fed. Cl. 43, 61 (2003) (parties "in a highly regulated field such as FCC licensing can have no distinct investment-backed expectations that include a reliance upon [**158] a legislative and regulatory status quo"); cf. *Connolly v. Pension Benefit Guar. Corp.*, 475 U.S. 211, 222-27, 89 L. Ed. 2d 166, 106 S. Ct. 1018 (1986) (no regulatory taking occurred because government had not appropriated property for its own use, did not impose a severe economic impact, and did not interfere with reasonable expectations). Thus we reject the Deregulatory Petitioners' suggestion that the attribution of JSAs will result in a regulatory taking.

⁷⁵ Again it is telling that the Deregulatory Petitioners do not argue that "concerns" raised by this aspect of the Order rise to the level of an actual constitutional violation. Br. of Pet'r Clear Channel at 58.