SUPREME COURT OF UNITED STATES

United States of America and Federal Communications Commission, Petitioners,

Vs.

Storer Broadcasting Company

No. 94.

Argued Feb. 28, 29, 1956.

Decided May 21, 1956.

Mr.Warren E. Baker, for petitioner.

Mr. Albert R. Connelly, New York City, for respondent.

Mr. Justice REED delivered the opinion of the Court.

The Federal Communications Commission issued, on August 19, 1948, a notice of proposed rulemaking under the authority of 47 U.S.C. §§ 303(r), 311, 313 and 314, 47 U.S.C.A. §§ 303(r), 311, 313, 314 (Communications Act of 1934, as amended, 47 U.S.C. § 301 et seq., 47 U.S.C.A. § 301 et seq.). It was proposed, so far as is pertinent to this case, to amend Rules 3.35, 3.240 and 3.636 relating to Multiple Ownership of standard, FM and television broadcast stations. Those rules provide that licenses for broadcasting stations will not be granted if the applicant, directly or indirectly, has an interest in other stations beyond a limited number. The purpose of the limitations is to avoid overconcentration of broadcasting facilities.

As required by 5 U.S.C. § 1003(b), 5 U.S.C.A. § 1003(b), the notice permitted 'interested' parties to file statements or briefs. Such parties might also intervene in appeals. 47 U.S.C. § 402(d) and (e), 47 U.S.C.A. § 402(d, e). Respondent, licensee of a number of radio and television stations, filed a statement objecting to the proposed changes, as did other interested broadcasters. Respondent based its objections largely on the fact that the proposed rules did not allow one person to hold as many FM and television stations as standard stations. Storer argued that such limitations might cause irreparable financial damage to owners of standard stations if an obsolescent standard station could not be augmented by FM and television facilities.

In November 1953 the Commission entered an order amending the Rules in question without significant changes from the proposed forms.1 A review was sought in due course by respondent in

the Court of Appeals for the District of Columbia Circuit under 5 U.S.C. § 1034, 5 U.S.C.A. § 1034,2 47 U.S.C. § 402(a), 47 U.S.C.A. § 402(a),3 and 5 U.S.C. § 1009(a), (c), 5 U.S.C.A. § 1009(a, c).4 Respondent alleged it owned or controlled, within the meaning of the Multiple Ownership Rules, seven standard radio, five FM radio and five television broadcast stations. It asserted that the Rules complained of were in conflict with the statutory mandates that applicants should be granted licenses if the public interest would be served and that applicants must have a hearing before denial of an application. 47 U.S.C. § 309(a) and (b), 47 U.S.C.A. § 309(a, b).5 Respondent also claimed:

'The Rules, in considering the ownership of one (1%) per cent or more of the voting stock of a broadcast licensee corporation as equivalent to ownership, operation or control of the station, are unreasonable and bear no rational relationship to the national Anti-Trust policy.'

This latter claim was important to respondent because allegedly 20% of its voting stock was in scattered ownership and was traded in by licensed dealers. This stock was thus beyond its control.

Respondent asserted it was a 'party aggrieved' and a 'person suffering legal wrong' or adversely affected under the several statutes that authorize review of FCC action. See notes 2, 3 and 4, supra. It stated its injuries from the Rules thus:

'Storer is adversely affected and aggrieved by the Order of the Commission adopted on November 25, 1953, amending the Multiple Ownership Rules, in that:

'(a) Storer is denied the right of a full and fair hearing to determine whether its ownership of an interest in more than seven (7) standard radio and five (5) television broadcast stations, in light of and upon a showing of all material circumstances, will thereby serve the public interest, convenience and necessity.

'(b) The acquisition of Storer's voting stock by the public under circumstances beyond the control of Storer, may and could be violative of the Multiple Ownership rules, as amended, and result in a forfeiture of licenses now held by Storer, with resultant loss and injury to Storer and to all other Storer stockholders.'

On the day the amendments to the Rules were adopted, a pending application of Storer for an additional television station at Miami was dismissed on the basis of the Rules.

While the question of respondent's right to appeal has not been raised by either party or by the Court of Appeals, our jurisdiction is now mooted. It may be considered. Federal Communications Commission v. National Broadcasting Co., [1943] USSC 102; 319 U.S. 239, 246[1943] USSC 102; , 63 S.Ct. 1035, 1038[1943] USSC 102; , 87 L.Ed. 1374. Jurisdiction depends upon standing to seek review and upon ripeness. If respondent could not rightfully seek review from the order adopting the challenged regulations, it must await action to its disadvantage under them, and neither the Court of Appeals nor this Court has jurisdiction of the controversy. Under the above-cited Code sections, review of Commission action is granted any party aggrieved or suffering legal wrong by that action.

We think respondent had standing to sue at the time it exercised its privilege. The process of rulemaking was complete. It was final agency action, 5 U.S.C. § 1001(c) and (g), 5 U.S.C.A. §

1001(c, g), by which Storer claimed to be 'aggrieved.' When the authority to appeal was substantially the same, we held that an appellant who complained of the grant of a license to a competitor because it would reduce its own income had standing to appeal against a contention, admittedly sound, that such economic injury to appellant was not a proper issue before the Commission. We said:

'Congress had some purpose in enacting section 402(b)(2). It may have been of opinion that one likely to be financially injured by the issue of a license would by the only person having a sufficient interest to bring to the attention of the appellate court errors of law in the action of the Commission in granting the license. It is within the power of Congress to confer such standing to prosecute an appeal.' Federal Communications Comm'n v. Sanders Bros. Radio Station, 309 U.S. 470, 477, 60 S.Ct. 693, 698, 84 L.Ed. 869.

We added that such an appellant could raise any relevant question of law in respect to the order.

Again in Columbia Broadcasting System v. United States, [1942] USSC 123; 316 U.S. 407, 62 S.Ct. 1194, 86 L.Ed. 1563, this Court considered the problem of standing to review Commission action under the then existing § 402(a), 48 Stat. 1093, and the Urgent Deficiencies Act, 38 Stat. 219. CBS there sought review of the adoption of Chain Broadcasting Regulations by the Commission. Against the contention that the adoption of regulations did not command CBS to do or refrain from doing anything, dissent 316 U.S. at 429, 62 S.Ct. 1206, this Court held that the order promulgating regulations was reviewable because it presently affected existing contractual relationships. It said:

'The regulations are not any the less reviewable because their promulgation did not operate of their own force to deny or cancel a license. It is enough that failure to comply with them penalizes licensees, and appellant, with whom they contract. If an administrative order has that effect it is reviewable and it does not cease to be so merely because it is not certain whether the Commission will institute proceedings to enforce the penalty incurred under its regulations for non-compliance.' Id., 316 U.S. at pages 417 418, 62 S.Ct. at page 1200.

The Court said that the regulations 'presently determine rights.' Id., 316 U.S. at page 421, 62 S.Ct. at page 1202.

'Appellant's standing to maintain the present suit in equity is unaffected by the fact that the regulations are not directed to appellant and do not in terms compel action by it or impose penalties upon it because of its action or failure to act. It is enough that, by setting the controlling standards for the Commission's action, the regulations purport to operate to alter and affect adversely appellant's contractual rights and business relations with station owners whose applications for licenses the regulations will cause to be rejected and whose licenses the regulations may cause to be revoked.' Id., 316 U.S. at page 422, 62 S.Ct. at page 1202.

See Federal Communications Commission v. American Broadcasting Co., [1954] USSC 27; 347 U.S. 284, 289, 74 S.Ct. 593, 597[1954] USSC 27; , 98 L.Ed. 699, and EL Dorado Oil Works v. United States, [1946] USSC 74; 328 U.S. 12, 18—19[1946] USSC 74; , 66 S.Ct. 843, 846[1946] USSC 74; , 90 L.Ed. 1053.

The regulations here under consideration presently aggrieve the respondent. The Commission exercised a power of rulemaking which controls broadcasters. The Rules now operate to control the

business affairs of Storer. Unless it obtains a modification of this declared administrative policy, Storer cannot enlarge the number of its standard of FM stations. It seems, too, that the note to Rule 3.636 (n. 1, supra) endangers Storer's stations as alleged in its petition for review. See this opinion, supra, 76 S.Ct. at page 767 at (b). Commission hearings are affected now by the Rules. Storer cannot cogently plan its present or future operations.7 It cannot plan to enlarge the number of its standard or FM stations, and at any moment the purchase of Storer's voting stock by some member of the public could endanger its existing structure. These are grievances presently restricting Storer's operations. In the light of the legislation allowing review of the Commission's actions, we hold that Storer has standing to bring this action.

In its petition for review Storer prayed the court to vacate the provisions of the Multiple Ownership Rules insofar as they denied to an applicant already controlling the allowable number of stations a 'full and fair hearing' to determine whether additional licenses to the applicant would be in the public interest.8 The Court of Appeals struck out, as contrary to § 309(a) and (b) of the Communications Act (n. 5, supra), the words italicized in Rule 3.636 (n. 1, supra) and the similar words in Rules 3.35 and 3.240. The case was remanded to the Commission with directions to eliminate these words. 95 U.S.App.D.C. 97, 220 F.2d 204. We granted certiorari 350 U.S. 816, 76 S.Ct. 52.

The Commission asserts that its power to make regulations gives it the authority to limit concentration of stations under a single control.9 It argues that rules may go beyond the technical aspects of radio, that rules may validly give concreteness to a standard of public interest, and that the right to a hearing does not exist where an applicant admittedly does not meet those standards as there would be no facts to ascertain. The Commission shows that its regulations permit applicants to seek amendments and waivers of or exceptions to its Rules.10 It adds:

'This does not mean, of course, that the mere filing of an application for a waiver * * * would necessarily require the holding of a hearing, for if that were the case a rule would no longer be a rule. It means only that it might be an abuse of discretion to fail to hear a request for a waiver which showed, on its face, the existence of circumstances making application of the rule inappropriate.'

Respondent defends the position of the Court of Appeals. It urges that an application cannot be rejected under 47 U.S.C. § 309, 47 U.S.C.A. § 309, without a 'full hearing' to applicant. We agree that a 'full hearing' under § 309 means that every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Cf. 5 U.S.C. § 1006(c), 5 U.S.C.A. § 1006(c). Such a hearing is essential for wise and just application of the authority of administrative boards and agencies.

We do not read the hearing requirement, however, as withdrawing from the power of the Commission the rulemaking authority necessary for the orderly conduct of its business. As conceded by Storer, 'Section 309(b) does not require the Commission to hold a hearing before denying a license to operate a station in ways contrary to those that the Congress has determined are in the public interest.'11 The challenged Rules contain limitations against licensing not specifically authorized by statute. But that is not the limit of the Commission's rulemaking authority. 47 U.S.C. § 154(i) and § 303(r), 47 U.S.C.A. §§ 154(i), 303(r), grant general rulemaking power not

inconsistent with the Act or law.

This Commission, like other agencies, deals with the public interest. Scripps-Howard Radio v. Federal Communications Commission, [1942] USSC 71; 316 U.S. 4, 14[1942] USSC 71; , 62 S.Ct. 875, 882[1942] USSC 71; , 86 L.Ed. 1229. Its authority covers new and rapidly developing fields. Congress sought to create regulation for public protection with careful provision to assure fair opportunity for open competition in the use of broadcasting facilities. Accordingly, we cannot interpret § 309(b) as barring rules that declare a present intent to limit the number of stations consistent with a permissible 'concentration of control.' It is but a rule that announces the Commission's attitude on public protection against such concentration.12 The Communications Act must be read as a whole and with appreciation of the responsibilities of the body charged with its fair and efficient operation. The growing complexity of our economy induced the Congress to place regulation of businesses like communication in specialized agencies with broad powers. Courts are slow to interfere with their conclusions when reconcilable with statutory directions.13 We think the Multiple Ownership Rules, as adopted, are reconcilable with the Communications Act as a whole. An applicant files his application with knowledge of the Commission's attitude toward concentration of control.

In National Broadcasting Co. v. United States, [1943] USSC 100; 319 U.S. 190, 63 S.Ct. 997, 87 L.Ed. 1344, similar rules prohibiting certain methods of chain broadcasting were upheld despite a claim that the Rules caused licenses to be denied without 'examination of written applications presented * * * as required by §§ 308 and 309.' Id., 319 U.S. at page 230, 63 S.Ct. at page 1016.14 The National Broadcasting case validated numerous regulations couched in the prohibitory language of the present regulations. The one in the margin will serve as an example.

In the National Broadcasting case we called attention to the necessity for flexiblity in the Rules there involved. 'Commission provided that 'networks will be given full opportunity, on proper application for new facilities or renewal of existing licenses, to call to our attention any reasons why the principle should be modified or held inapplicable." Id., 319 U.S. at apge 207, 63 S.Ct. at page 1005. We said:

'The Commission therefore did not bind itself inflexibly to the licensing policies expressed in the Regulations. In each case that comes before it the Commission must still exercise an ultimate judgment whether the grant of a license would serve the 'public interest, convenience, or necessity.' If time and changing circumstances reveal that the 'public interest' is not served by application of the Regulations, it must be assumed that the Commission will act in accordance with its statutory obligations.' Id., 319 U.S. at page 225, 63 S.Ct. at page 1013.

That flexibility is here under the present § 309(a) and (b) and the FCC's regulations. See n. 10, supra. We read the Act and Regulations as providing a 'full hearing' for applicants who have reached the existing limit of stations, upon their presentation of applications conforming to Rules 1.361(c) and 1.702, that set out adequate reasons why the Rules should be waived or amended. The Act, considered as a whole, requires no more. We agree with the contention of the Commission that a full hearing, such as is required by § 309(b), note 5, supra, would not be necessary on all such applications. As the Commission has promulgated its Rules after extensive administrative hearings, it is necessary for the accompanying papers to set forth reasons, sufficient if true, to justify a change

or waiver of the Rules. We do not think Congress intended the Commission to waste time on applications that do not state a valid basis for a hearing. If any applicant is aggrieved by a refusal, the way for review is open.

We reverse the judgment of the Court of Appeals and remand the case to that court so that it may consider respondent's other objections to the Multiple Ownership Rules.

Reversed and remanded.

Mr. Justice DOUGLAS concurs in the result.

Mr. Justice HARLAN, concurring in part and dissenting in part.

The Court has properly deemed it necessary to question sua sponte the jurisdiction of the Court of Appeals to entertain this case,1 but I am unable to agree with its decision that such jurisdiction existed. In my view, Storer was not a 'party aggrieved by a final order' of the Commission, within the meaning of 5 U.S.C. § 1034, 5 U.S.C.A. § 1034, and hence was not entitled to invoke the jurisdiction of the Court of Appeals. Accordingly, I would vacate the judgment below and remand the case to the Court of Appeals with directions to dismiss the petition for lack of jurisdiction.

1. These regulations do not, in my view, constitute an 'order' within the meaning of § 1034. They simply establish certain standards to be followed by the Commission in the future exercise of its licensing powers; they do not require any licensee to do or to refrain from doing anything, attach no consequences to his action or inaction, and determine no questions as to his legal status. As such they are quite unlike the Chain Broadcasting regulations which were held to be a reviewable 'order' in Columbia Broadcasting System v. United States, [1942] USSC 123; 316 U.S. 407, 62 S.Ct. 1194, 86 L.Ed. 1563, in a proceeding comparable to this one. Those regulations were held reviewable, not because every Commission action in the form of a regulation was considered to be an 'order,' but for the specific reason that they proscribed certain kinds of contracts between licensees and the national networks and, by prescribing the sanction of license cancellation for noncompliance, operated to coerce action by the licensees and to determine the legal status of the networks' contracts. Of their own force and with no further administrative action being taken, the regulations induced licensees to cancel existing network contracts and deterred them from entering into new ones. That coercive effect of the regulations on present conduct, the very characteristic which led the Court to regard the Chain Broadcasting regulations as an 'order' despite their form, is totally lacking here.

2. A second obstacle to review of the regulations here is that, even if they be deemed an 'order,' Storer has not shown that it is 'aggrieved' by them.

In assessing the character of Storer's grievance, we must put aside the Commission's order, made simultaneously with its promulgation of the challenged regulations, which denied a pending application by Storer for a sixth television license. That order was reviewable only by a direct appeal within 30 days under 47 U.S.C. § 402(b), (c), 47 U.S.C.A. § 402(b), (c), Federal Communications Commission v. Columbia Broadcasting System, [1940] USSC 123; 311 U.S. 132, 61 S.Ct. 152, 85 L.Ed. 87, and became final and conclusive upon Storer's failure to appeal from it. Since that order cannot be reviewed, and no relief from it may be granted in this proceeding, it is only of the prospective effect of the regulations, not their past application, that Storer may

complain. And it is by that effect that Storer must show it is 'aggrieved.'

In its petition for review, Storer alleged that it was aggrieved by the regulations in that:

'(a) Storer is denied the right of a full and fair hearing to determine whether its ownership of an interest in more than seven (7) standard radio and five (5) television broadcast stations, in light of and upon a showing of all material circumstances, will thereby serve the public interest, convenience and necessity.

'(b) The acquisition of Storer's voting stock by the public under circumstances beyond the control of Storer, may and could be violative of the Multiple Ownership rules, as amended, and result in a forfeiture of licenses now held by Storer, with resultant loss and injury to Storer and to all other Storer stockholders.'

However these allegations are read, they assert no more than that the Commission may in the future take action pursuant to the regulations to deny or revoke a license. Of course, if such action should ever be taken, Storer would then be 'aggrieved.' But by the same token it would then have a complete remedy through a direct appeal from such action under § 402(b). Until such time as the regulations are applied to it, however, Storer will not have been 'aggrieved' and hence will not be entitled to review. Indeed, in this case we do not even reach often difficult problem whether an alleged injury is sufficient or of such a nature as to entitle the complaining party to review; here we have that rare case in which no present injury of any kind is even alleged.

It is said, however, that the regulations 'now operate to control the business affairs of Storer,' despite the absence of any such allegation by Storer. Since the Regulations do not have any coercive effect, I take that to mean only that Storer, if it exercises prudent business judgment, will take into account the announced policy of the Commission in deciding whether or not to apply for an additional license. No doubtt hat is true, but I fail to see show Storer has been 'aggrieved' by being told in advance one of the factors that will govern the disposition of any future license application on its part. If anything, Storer is now able to make a more enlightened judgment as to the probabilities of success in obtaining a further license.

3. So clear is it, in fact, that Storer has not been 'aggrieved' by the mere issuance of the regulations, that the Court's grant of review in this case must be premised not upon the effect of the regulations themselves, but simply upon Storer's interest in knowing whether or not a future application of them would be valid. The result is that the statutory procedure for obtaining relief from a present injury caused by an order has been converted into something quite different—namely, a procedure for obtaining a declaratory judgment as to the validity of a future application of new regulations. Not only is such a proceeding not authorized by the statute, however, but Storer would not have standing to invoke it even if it were.

That declaratory relief from future orders is not contemplated by § 1034 seems clear. That section authorizes review only of an 'order,' only if the order is 'final,' and only at the instance of one aggrieved 'by' the challenged order itself. The regulations here are not an 'order'; if they were it would not be 'final' since further administrative action must be taken before Storer will be affected; and Storer's grievance, if any, will be caused not 'by' the regulations but only by their future application. Moreover, quite apart from these obstacles, the procedure provided for by § 1034 is inappropriate for anticipatory equitable relief. That section requires, for example, that petitions for

review be filed within 60 days after the order is issued. While such a time limitation is clearly appropriate to a procedure for relief from an injury already suffered, there seems no justification for so limiting the availability of declaratory relief from future action. Why should declaratory relief be denied as the threat of the future injury becomes more imminent, or be granted to those who have a sufficient interest to seek review immediately while being denied to those who later acquire a similar or even greater interest? Finally, no reason is apparent why existing procedures for declaratory judgments are not adequate; to construe § 1034 as an alternative declaratory judgment procedure simply produces the incongruous result of authorizing declaratory relief in the Courts of Appeals within 60 days after the order is issued and in the District Courts thereafter.

In the second place, even if § 1034 is to be construed as authorizing declaratory relief, I see no reason why the usual requirements for invoking equity jurisdiction should not be as applicable to such a proceeding as they are to an ordinary declaratory judgment action or to a proceeding to set aside a Commission order under the Urgent Deficiencies Act, the predecessor to § 1034 under which the CBS case arose. In that case, CBS's right to equitable relief in advance of the application of the regulations was expressly based on the irreparable injury it would suffer—the wholesale concellation of its contracts with licensees—before any further administrative action was taken and for which there was no other adequate remedy. Unless these requirements for equitable relief are to be abandoned, there can be no right to relief here, for Storer alleges no threatened injury of any kind, other than the possibility of future administrative action for which there would be a complete remedy by appeal.

It is said, however—again without support of any allegations by Storer—that Storer 'cannot cogently plan its present or future operations' unless it is advised whether or not the regulations are valid. But plans for expansion of communications facilities have always had to be made subject to the contingency that the Commission might refuse to grant the necessary license for any one of a number of reasons. Storer's position in this respect is now no different than it was before the regulations were issued: any plan to acquire a new station must simply take into account, among the several contingencies, the likelihood that a denial of a license under the regulations would be upheld on appeal. What this argument comes down to, therefore, is that Storer needs to know whether or not it can validly be denied a license under the regulations so that, if it can, it need not make an application. That is, the injury that Storer will have suffered if the decision on the validity of the regulations is postponed until Storer in fact applies for a license is the expense of making that very application, the same injury that is suffered by all unsuccessful license applicants. Until today, I should not have thought argument was necessary to reject such a basis for declaratory relief. Declaratory relief has been denied persons whose only alternative was to risk both dismissal from public employment and the imposition of criminal penalties, United Public Workers of America (C.I.O.) v. Mitchell, [1947] USSC 23; 330 U.S. 75, 67 S.Ct. 556, 91 L.Ed. 754, yet it is granted here to relieve Storer of the mere burden of making an application for a license.

The holding of the Court today amounts to this: that regulations which impose no duty and determine no rights may be reviewed at the instance of a person who alleges no injury, to settle whether a future application of the regulations that may never occur would be valid. The lack of support for this decision is disclosed by the Court's primary reliance on CBS,4 a case which in my view not only fails to support the Court's conclusion but is persuasive, if not controlling, authority for precisely the opposite result.5 In my opinion, the implications of the decision undermine much of the settled law on reviewability of administrative action, and it is the more unfortunate because

made without the benefit of briefs or argument by the parties. I cannot concur in that part the Court's opinion.

The Court having decided, however, that the Court of Appeals had jurisdiction, I concur with the Court on the merits.

Mr. Justice FRANKFURTER, dissenting.

While I agree that the amendatory Rules promulgated by the Federal Communications Commission relating to Multiple Ownership of standard, FM and television stations constitute a reviewable 'order' within the meaning of 5 U.S.C. § 1034, 5 U.S.C.A. § 1034, my Brother HARLAN'S reasoning convinces me that the respondent was not on the record before us a 'party aggrieved' under that section. Therefore the court below should not have entertained the petition to review the Commission's order.

Procedural and jurisdictional limitations on judicial action by the federal courts are not playthings of lawyers nor obstructions on the road of justice. Whether formulated by the Constitution, congressional enactments or settled judicial precedents, they are means designed to keep the courts within appropriate limits and to enforce rights according to general standards and not have them depend on the impact of the individual case. To be sure, dealing as we are with general standards, differences of views regarding their scope and applicability are bound to arise from time to time. Who is a 'party aggrieved' or a 'party in interest' turns on the context, often confused and dubious, of a particular set of circumstances and therefore raises issues on which judges not unnaturally divide, as they do on other unmathematical problems of the law. See Singer & Sons v. Union Pacific R. Co., [1940] USSC 142; 311 U.S. 295, 61 S.Ct. 254, 85 L.Ed. 198.

To the laity such matters may seem technicalities in a derogatory sense of the term. But this is only one phase of an attitude of mind that thinks ill of law which does not accord with private wishes. When informed by a legal adviser that to carry out his desires would encounter 'technical legal difficulties,' a strenuous President of the United States impatiently observed that 'all law is technicality.' But even professionally competent officials are at times impatient with decisions that fail to adjudicate substantive issues on which light is sought. It seems to me important, therefore, not to minimize the function of jurisdictional limitations upon adjudication by expressing views on the merits. There are, of course, exceptional situations where it is proper for a dissenter to go to the merits when a majority of theCourt removes from the case threshold objections of procedure and jurisdiction. See e.g., Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 341, 56 S.Ct. 466, 480[1936] USSC 36; , 80 L.Ed. 688. This is not such a case.