

The Supreme Court - April 1, 2021

Today, the Supreme Court of the United States issued the following three decisions:

Facebook, Inc. v. Duguid, No. 19-511: The Telephone Consumer Protection Act of 1991 (“TCPA”) provides a private right of action for those subject to the unlawful use of an “automatic telephone dialing system,” defined in the statute as a piece of equipment with the capacity both “to store or produce telephone numbers to be called, using a random or sequential number generator,” and to dial those numbers. 47 U.S.C. §227(a) (1). Here, petitioner Facebook, Inc., has an opt-in service in which it sends users “login notification” texts when an attempt is made to access their Facebook account from an unknown device. Respondent Noah Duguid alleged that he received several such login-notification text messages from Facebook, despite having never had a Facebook account (possibly because he was assigned a cell phone number that previously belonged to a Facebook user). Duguid brought a TCPA suit against Facebook, which the District Court dismissed. The Court determined that Facebook did not use an auto-dialer because Duguid had alleged Facebook sent targeted, individualized texts (rather than texts to numbers that were randomly or sequentially generated, as an auto-dialer would do). The Ninth Circuit reversed, holding that it was sufficient that Facebook’s system automatically dialed stored numbers. Today, the Court reversed, in Facebook’s favor, holding that to qualify as an “automatic telephone dialing system,” a device must have the capacity either to store a telephone number using a random or sequential generator or to produce a telephone number using a random or sequential number generator. Justice Sotomayor delivered the Court’s opinion. Justice Alito separately concurred in the judgment.

View the Court's [decision](#).

FCC v. Prometheus Radio Project, No. 19-1231: The Federal Communications Commission (“FCC”) possesses broad statutory authority to regulate broadcast media in the public interest, under which it has promulgated strict ownership rules limiting the number of radio stations, television stations, and newspapers that a single entity may

Related Capabilities

- Appellate
- Telecommunications

own in a given market. Section 202(h) of the Telecommunications Act of 1996, in turn, requires that the FCC review those rules every four years, and repeal or modify any ownership rules the FCC determines are no longer in the public interest. Since 2002, the FCC has sought to change several of its ownership rules, and each time, the Third Circuit has rejected those efforts as unlawful under the Administrative Procedure Act (“APA”). Most recently, the FCC concluded in 2017 that three of its ownership rules no longer served the public interest, and thus sought to repeal the Newspaper/Broadcast Cross-Ownership Rule and the Radio/Television Cross-Ownership Rule, and to modify the Local Television Ownership Rule. The FCC did so after conducting its analysis and concluding that the rules were no longer necessary to promote competition, localism, and viewpoint diversity, and that changing the rules was not likely to harm minority and female ownership. The Third Circuit agreed with non-profit groups, including respondent Prometheus Radio Project, that the FCC’s decision was arbitrary and capricious under the APA, largely on the basis that the record evidence did not support the FCC’s judgment regarding the effects on minority and female ownership. The Court today reversed, holding that the FCC’s decision was reasonable and reasonably explained for purposes of the APA’s deferential arbitrary-and-capricious standard. Justice Kavanaugh delivered the Court’s unanimous opinion. Justice Thomas also filed a concurrence.

View the Court's [decision](#).

Florida v. Georgia, No. 142, Orig.: The Court has original jurisdiction to equitably apportion interstate streams between States. Here, Florida alleges that Georgia consumes more than its share of water from the Apalachicola-Chattahoochee-Flint River Basin, which caused sustained low flows in the Apalachicola River, and in turn harmed Florida’s oyster fisheries and river eco-system. An appointed special master concluded that Florida had failed to prove by clear and convincing evidence that Georgia’s alleged overconsumption was the cause of Florida’s harm. The Court today agreed, recognizing the seriousness of Florida’s injury to its oyster fisheries, but finding that Florida had failed to sufficiently show that Georgia’s overconsumption caused any of the increases to salinity and predation that contributed to the oyster fisheries’ collapse. Justice Barrett issued the Court’s unanimous opinion.

View the Court's [decision](#).