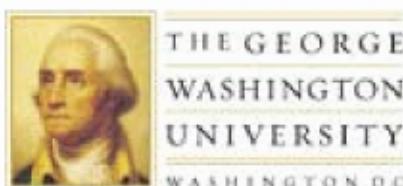


The Burger Court Opinion Writing Database

*National Cable Television Association v.
United States*

415 U.S. 336 (1974)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

February 21, 1974

Re: 72-948 - National Cable Television Assoc. v. FCC

Dear Bill:

Please join me.

Regards,

W. J. D.

Mr. Justice Douglas

Copies to the Conference

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-948

Circled 12-21
Received 12-21

National Cable Television Association, Inc., Petitioner,
v.
United States and Federal Communications Commission.

On Writ of Certiorari to
the United States Court
of Appeals for the Fifth
Circuit.

[January —, 1974]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

The Independent Offices Appropriation Act of 1952, 31 U. S. C. § 483 (a) provides in relevant part "It is the sense of the Congress that any work, service . . . benefit . . . license . . . or similar thing of value or utility performed, furnished, provided, granted . . . by any Federal agency . . . to or for any person (including . . . corporations . . .) shall be self-sustaining to the full extent possible, and the head of each Federal agency is authorized by regulation . . . to prescribe . . . such fee, charge, or price, if any, as he shall determine . . . to be fair and equitable taking into consideration direct and indirect cost to the government, value to the recipient, public policy or interest served, and other pertinent facts" Petitioner is a trade associate rep-

¹The Committee Report, H. R. Rep. No. 384, 82d Cong., 1st Sess., makes the following comment on this measure:

"The Committee is concerned that the Government is not receiving full return from many of the services which it renders to special beneficiaries. Many fees for such services are specifically fixed by

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-948

Rec'd. 1-2

National Cable Television Association, Inc., Petitioner,
v.
United States and Federal Communications Commission.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[January 1, 1974]

Mr. JUSTICE DOUGLAS delivered the opinion of the Court

The Independent Offices Appropriation Act of 1952, 31 U. S. C. § 483 (a) provides in relevant part "It is the sense of the Congress that any work, service . . . benefit . . . license . . . or similar thing of value or utility performed, furnished, provided, granted . . . by any Federal agency . . . to or for any person (including . . . corporations . . .) shall be self-sustaining to the full extent possible, and the head of each Federal agency is authorized by regulation . . . to prescribe . . . such fee, charge, or price, if any, as he shall determine . . . to be fair and equitable taking into consideration direct and indirect cost to the government, value to the recipient, public policy or interest served, and other pertinent facts . . .". Petitioner is a trade associate rep-

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To : The Chief Justice
Mr. Justice Brennan
Mr. Justice Black
Mr. Justice Blackmun
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Marshall
Mr. Justice Stewart
Mr. Justice White
Mr. Justice William J. Brennan, Jr.

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-948

1-9-1

National Cable Television Association, Inc., Petitioner,
v.
United States and Federal Communications
Commission. } On Writ of Certiorari to
the United States Court
of Appeals for the Fifth
Circuit.

[January —, 1974]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

The Independent Offices Appropriation Act of 1952, 31 U. S. C. § 483a provides in relevant part "It is the sense of the Congress that any work, service . . . benefit . . . license . . . or similar thing of value or utility performed, furnished, provided, granted . . . by any Federal agency . . . to or for any person (including . . . corporations . . .) shall be self-sustaining to the full extent possible, and the head of each Federal agency is authorized by regulation . . . to prescribe . . . such fee, charge, or price, if any, as he shall determine . . . to be fair and equitable taking into consideration direct and indirect cost to the Government, value to the recipient, public policy or interest served, and other pertinent facts . . ."¹ Petitioner is a trade association rep-

¹ The Committee Report, H. R. Rep. No. 384, 82d Cong., 1st Sess., 1 pp. 2-3, makes the following comment on this measure:

"The Committee is concerned that the Government is not receiving full return from many of the services which it renders to special beneficiaries. Many fees for such services are specifically fixed by

To : The Chief Clerk
Mr. Justice BREWSTER
Mr. Justice STEWART
Mr. Justice WARREN
Mr. Justice MARSHALL
Mr. Justice BLACK
Mr. Justice WHITE
Mr. Justice POWELL
Mr. Justice REHNQUIST

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-948

circulate:

Recirculate: 2-25

National Cable Television Association, Inc., Petitioner,
v.
United States and Federal Communications Commission.

On Writ of Certiorari to
the United States Court
of Appeals for the Fifth
Circuit.

[January —, 1974]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

The Independent Offices Appropriation Act of 1952, 31 U. S. C. § 483a provides in relevant part "It is the sense of the Congress that any work, service . . . benefit . . . license . . . or similar thing of value or utility performed, furnished, provided, granted . . . by any Federal agency . . . to or for any person (including . . . corporations . . .) shall be self-sustaining to the full extent possible, and the head of each Federal agency is authorized by regulation . . . to prescribe . . . such fee, charge, or price, if any, as he shall determine . . . to be fair and equitable taking into consideration direct and indirect cost to the Government, value to the recipient, public policy or interest served, and other pertinent facts" Petitioner is a trade association rep-

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"The Committee is concerned that the Government is not receiving full return from many of the services which it renders to special beneficiaries. Many fees for such services are specifically fixed by

4,56
21

To : The Chief Justice
Mr. Justice Brennan
Mr. Justice Black
Mr. Justice Blackmun
Mr. Justice Douglas
Mr. Justice Fortas
Mr. Justice Harlan
Mr. Justice Marshall
Mr. Justice Stewart
Mr. Justice White
Mr. Justice William J. Brennan, Jr.
Mr. Justice William O. Douglas
Mr. Justice Thurgood Marshall
Mr. Justice William H. Rehnquist
Mr. Justice Harry A. Blackmun
Mr. Justice John Paul Stevens
Mr. Justice Sandra Day O'Connor
Mr. Justice Antonin Scalia
Mr. Justice Anthony M. Kennedy
Mr. Justice Ruth Bader Ginsburg
Mr. Justice Stephen G. Breyer

6th DRAFT

5/26/74

2-28

SUPREME COURT OF THE UNITED STATES

No. 72-948

Received [Signature]

National Cable Television Association, Inc., Petitioner,
v.
United States and Federal Communications
Commission.

On Writ of Certiorari to
the United States Court
of Appeals for the Fifth
Circuit.

[January — 1974]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

The Independent Offices Appropriation Act of 1952, 31 U. S. C. § 483a provides in relevant part "It is the sense of the Congress that any work, service . . . benefit . . . license . . . or similar thing of value or utility performed, furnished, provided, granted . . . by any Federal agency . . . to or for any person (including . . . corporations . . .) shall be self-sustaining to the full extent possible, and the head of each Federal agency is authorized by regulation . . . to prescribe . . . such fee, charge, or price, if any, as he shall determine . . . to be fair and equitable taking into consideration direct and indirect cost to the Government, value to the recipient, public policy or interest served, and other pertinent facts . . .".¹ Petitioner is a trade association rep-

¹ The Committee Report, H. R. Rep. No. 384, 82d Cong, 1st Sess., pp. 2-3, makes the following comment on this measure:

"The Committee is concerned that the Government is not receiving full return from many of the services which it renders to special beneficiaries. Many fees for such services are specifically fixed by

January 4, 1974

RE: No. 72-948 National Cable TV Assn. v. U.S.
No. 72-1162 F.P.C. v. New England Power

Dear Thurgood:

I would be happy to have you undertake
the dissent in the above.

Sincerely,

Mr. Justice Marshall

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 27, 1974

RE: Nos. 72-948 & 72-1162 --
National Cable TV v. United States
and FCC and FPC v. New England
Power Company, et al.

Dear Thurgood:

Please join me in your opinion in the
above.

Sincerely,



Mr. Justice Marshall

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

January 7, 1974

Re: No. 72-948, National Cable Television Assn.
v. United States

Dear Bill,

I am glad to join your opinion for the Court
in this case.

Sincerely yours,

P.S.

Mr. Justice Douglas

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 2, 1974

Re: No. 72-948 - National Cable Television
Assn Inc. v. United States and FCC

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Douglas

Copies to Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 17, 1974

MEMORANDUM TO THE CONFERENCE

Re: No. 72-948 -- National Cable Television Assn. v.
United States

In due course I will circulate a dissent in this case.



Thurgood Marshall

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Black
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

SUPREME COURT OF THE UNITED STATES

com: Marshall, J.

Nos. 72-948 AND 72-1162

Circulated: FEB 2

Recirculated: —

National Cable Television Association, Inc., Petitioner,
72-948 v. United States and Federal Communications Commission.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

Federal Power Commission, Petitioner,
72-1162 v. New England Power Company et al.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

[February —, 1974]

MR. JUSTICE MARSHALL, concurring in No. 72-1162 and dissenting in No. 72-948:

These cases present two distinct issues involving interpretation of the Independent Offices Appropriations Act of 1952: first, whether sufficient "work, service, . . . benefit, . . . or similar thing of value or utility" was conferred on the CATV operators or utility companies to warrant imposition of a fee under the statute; and, second, whether, if a fee was justifiably imposed, the amount of the fee was determined in accordance with a proper interpretation of the statutory standard that it be "fair and equitable taking into consideration direct and indirect cost to the Government, value to the recipient, public policy or interest served, and other facts."

Pertinent

The Court, however, fails to recognize that these issues require independent analysis. Instead, permeating the Court's opinions on both issues is an attempt to draw

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackm^r
Mr. Justice Powell
Mr. Justice Rehnqu

2nd DRAFT

Prop: Marshall, J.

Circulated:

Recirculated:

FEB 21

National Cable Television Association, Inc., Petitioner,
72-948 v.
United States and Federal Communications
Commission.

On Writ of Certiorari
to the United States
Court of Appeals for
the Fifth Circuit.

Federal Power Commission,
Petitioner,
72-1162 *v.*
New England Power Company
et al.

On Writ of Certiorari
to the United States
Court of Appeals for
the District of Colum-
bia Circuit.

[February —, 1974]

MR. JUSTICE MARSHALL, concurring in No. 72-1162 and dissenting in No. 72-948:

These cases present two distinct issues involving interpretation of the Independent Offices Appropriations Act of 1952: first, whether sufficient "work, service, . . . benefit, . . . or similar thing of value or utility" was conferred on the CATV operators or utility companies to warrant imposition of a fee under the statute; and, second, whether, if a fee was justifiably imposed, the amount of the fee was determined in accordance with a proper interpretation of the statutory standard that it be "fair and equitable taking into consideration direct and indirect cost to the Government, value to the recipient, public policy or interest served, and other pertinent facts."

The Court, however, fails to recognize that these issues require independent analysis. Instead, permeating the Court's opinions on both issues is an attempt to draw

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Black
Mr. Justice Powell
Mr. Justice Rehnquist

From: Marshall, J.

Circulated:

Recirculated: FEB 28

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 72-948 AND 72-1162

National Cable Television Association, Inc., Petitioner,
72-948 v.
United States and Federal Communications Commission

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

Federal Power Commission, Petitioner,
72-1162 v.
New England Power Company et al.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

[February —, 1974]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE BRENNAN joins, concurring in the result in No. 72-1162 and dissenting in No. 72-948.

These cases present two distinct issues involving interpretation of the Independent Offices Appropriations Act of 1952: first, whether sufficient "work, service, . . . benefit. . . or similar thing of value or utility" was conferred on the CATV operators or utility companies to warrant imposition of a fee under the statute; and second, whether, if a fee was justifiably imposed, the amount of the fee was determined in accordance with a proper interpretation of the statutory standard that it be "fair and equitable taking into consideration direct and indirect cost to the Government, value to the recipient, public policy or interest served, and other pertinent facts."

The Court, however, fails to recognize that these issues require independent analysis. Instead, permeating the Court's opinions on both issues is an attempt to draw

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 28, 1973

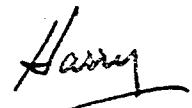
Re: No. 72-948 - National Cable Television
Association, Inc. v. U. S.

Dear Bill:

Will you please add the following at the end of your
opinion for this case:

"Mr. Justice Blackmun took no part in
the decision of this case."

Sincerely,



Mr. Justice Douglas

cc: The Conference

November 10, 1973

No. 72-948 National Cable TV v. U.S.

Dear Chief:

It has come to my attention that American Telephone & Telegraph Company has requested leave to file a brief amicus.

I served for a few years on the Board of the Chesapeake & Potomac Telephone Company, a subsidiary of AT&T. In these circumstances, I think that at least for another year or two I should disqualify myself in any case in which the parent is directly concerned. The amicus brief indicates that AT&T does have a substantial interest in the outcome of this litigation.

Accordingly, I should be marked out on the public record.

Sincerely,

The Chief Justice

lfp/ss

cc: Mr. Michael Rodak, Jr.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

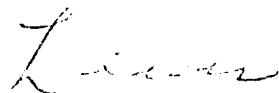
December 27, 1973

No. 72-948 National Cable TV v. United States
No. 72-1162 FPC v. New England Power

Dear Bill:

Please note at the end of your opinions that I took no part in
the decision of these cases.

Sincerely,



Mr. Justice Douglas

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

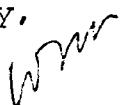
January 7, 1974

Re: No. 72-948 - National Cable TV v. U.S. and FCC

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Douglas

Copies to the Conference