

The Burger Court Opinion Writing Database

FCC v. WNCN Listeners Guild

450 U.S. 582 (1981)

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



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

CHAMBERS OF
THE CHIEF JUSTICE

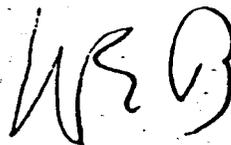
March 5, 1981

Re: No. 79-824, FCC v. WNCN Listeners Guild, etc.

Dear Byron:

I join your March 4 recirculation.

Regards;



Justice White
Copies to the Conference

REPRODUCED FROM THE COLLECTED MANUSCRIPT DIVISION

SECTION OF CONGRESS

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

November 17, 1980

RE: Nos. 79-824, 825, 826 & 827 FCC, et al. v. WNCN
Listeners Guild, Inc.

Dear Thurgood:

You and I are the only dissenters in the above.
Would you be willing to undertake the dissent?

Sincerely,

Bill

Mr. Justice Marshall

REPRODUCED FROM THE COLLECTION

NATIONAL MANUSCRIPT DIVISION

U.S. SUPREME COURT ARCHIVES

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 30, 1980

RE: Nos. 79-824, 825, 826 and 827 - FCC, Insilco Broad-
casting, American Broadcasting and National Broadcasting
v. WNCN Listeners Guild, et al.

Dear Byron:

I'll await the dissent.

Sincerely,

Bill

Mr. Justice White

cc: The Conference

REPRODUCED FROM THE COLLECTION OF THE MANUSCRIPT DIVISION OF THE LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 26, 1981

RE: Nos. 79-824, 5, 6, & 7 FCC, Insilco, et al. v.
WNCN Listeners Guild, Inc.

Dear Thurgood:

Please join me.

Sincerely,

Bill

Mr. Justice Marshall

cc: The Conference

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IN THE MANUSCRIPT DIVISION

LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE POTTER STEWART

December 30, 1980

Re: 79-824, 79-825, 79-826, and 79-827
FCC v. WNCN LISTENERS GUILD

Dear Byron,

I am glad to join your opinion for
the Court in these cases.

Sincerely yours,

W.S.
/

Justice White

Copies to the Conference

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NATIONAL ARCHIVES MANUSCRIPT DIVISION

U.S. DEPARTMENT OF CONGRESS

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
✓ Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice White

Circulated: 29 DEC 1980

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 79-824, 79-825, 79-826, AND 79-827

Federal Communications Com-
mission et al., Petitioners,
79-824 v.
WNCN Listeners Guild et al.

Insilco Broadcasting Corpora-
tion et al., Petitioners,
79-825 v.
WNCN Listeners Guild et al.

American Broadcasting Com-
panies, Inc., et al.,
Petitioners,
79-826 v.
WNCN Listeners Guild et al.

National Association of Broad-
casters et al., Petitioners,
79-827 v.
WNCN Listeners Guild et al.

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

[January —, 1981]

JUSTICE WHITE delivered the opinion of the Court.

Sections 309 (a) and 310 (d) of the Communications Act of 1934, 47 U. S. C. § 151 *et seq.* (Act), empower the Federal Communications Commission to grant an application for license transfer¹ or renewal only if it determines that “the public interest, convenience and necessity” will be served

¹ We shall refer to transfers and assignments of licenses as “transfers.”

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BFW
I should say my
interest
in this case
is not
small

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

Stylistic changes; changes at pp.
- 2, 5, 10, 13, 14, 16, 17-21

From Mr. Justice White

Circulated: _____

3rd DRAFT

Recirculated: 4 _____

SUPREME COURT OF THE UNITED STATES

Nos. 79-824, 79-825, 79-826, AND 79-827

Federal Communications Commission et al., Petitioners,
79-824 v.
WNCN Listeners Guild et al.
Insilco Broadcasting Corporation et al., Petitioners,
79-825 v.
WNCN Listeners Guild et al.
American Broadcasting Companies, Inc., et al.,
Petitioners,
79-826 v.
WNCN Listeners Guild et al.
National Association of Broadcasters et al., Petitioners,
79-827 v.
WNCN Listeners Guild et al.

On Writs of Certiorari to the United States Court of Appeals for the District of Columbia Circuit,

[January —, 1981]

JUSTICE WHITE delivered the opinion of the Court.

Sections 309 (a) and 310 (d) of the Communications Act of 1934, 47 U. S. C. § 151 *et seq.* (Act), empower the Federal Communications Commission to grant an application for license transfer¹ or renewal only if it determines that “the public interest, convenience and necessity” will be served

¹ We shall refer to transfers and assignments of licenses as “transfers.”

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U.S. DEPARTMENT OF COMMERCE

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To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 19

From: Mr. Justice White

Circulated: _____

Recirculated: 5 MAR 1981

4th DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 79-824, 79-825, 79-826, AND 79-827

Federal Communications Commission et al., Petitioners,
79-824 v.
WNCN Listeners Guild et al.
Insilco Broadcasting Corporation et al., Petitioners,
79-825 v.
WNCN Listeners Guild et al.
American Broadcasting Companies, Inc., et al.,
Petitioners,
79-826 v.
WNCN Listeners Guild et al.
National Association of Broadcasters et al., Petitioners,
79-827 v.
WNCN Listeners Guild et al.

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

[January —, 1981]

JUSTICE WHITE delivered the opinion of the Court.

Sections 309 (a) and 310 (d) of the Communications Act of 1934, 47 U. S. C. § 151 *et seq.* (Act), empower the Federal Communications Commission to grant an application for license transfer¹ or renewal only if it determines that "the public interest, convenience and necessity" will be served

¹ We shall refer to transfers and assignments of licenses as "transfers."

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 29, 1980

Re: Nos. 79-824, 825, 826, and 827 - FCC, et al. v.
WNCN Listeners Guild, Inc.

Dear Byron:

I shall try my hand at a dissent in this one.

Sincerely,

T.M.

T.M.

Justice White

cc: The Conference

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MANUSCRIPT DIVISION

U.S. SUPREME COURT

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SECTION OF THE LIBRARY OF CONGRESS

23 FEB 1981

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 79-824, 79-825, 79-826, AND 79-827

Federal Communications Commission et al., Petitioners,
 79-824 v.
 WNCN Listeners Guild et al.

Insilco Broadcasting Corporation et al., Petitioners,
 79-825 v.
 WNCN Listeners Guild et al.

American Broadcasting Companies, Inc., et al.,
 Petitioners,
 79-826 v.
 WNCN Listeners Guild et al.

National Association of Broadcasters et al., Petitioners,
 79-827 v.
 WNCN Listeners Guild et al.

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

[March —, 1981]

JUSTICE MARSHALL, dissenting.

Under §§ 309 (a) and 310 (d) of the Communications Act of 1934, 47 U. S. C. § 151 *et seq.* (Act), the Federal Communications Commission (Commission) may not approve an application for a radio license transfer, assignment or renewal unless it finds that such change will serve "the public interest, convenience, and necessity."¹ Any party in interest

¹ The pertinent portions of 47 U. S. C. §§ 309 (a) and 310 (d) are quoted in the majority opinion, *ante*, at 2, n. 2.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 2, 1981

MEMORANDUM TO THE CONFERENCE

Re: Nos. 79-824, 825, 826 and 827 -
FCC v. WNCN Listeners Guild

I am adding the following paragraph to footnote 27 in my dissent in the above cases.

The Commission recently voted to reduce its role in regulating several aspects of commercial radio broadcasting, including regulation of nonentertainment programming. Thus, the Commission has announced its intention of eliminating its current guideline on the amounts of nonentertainment programming that radio stations should air. And the Commission has indicated that petitions to deny license renewals based on only the quantity of a licensee's nonentertainment programming will no longer be sufficient to support a challenge. For example, a petitioner would have to show that a licensee is doing little or no programming responsive to community issues in order to successfully challenge renewal of the license. Nonetheless, the Commission reiterated that nonentertainment programming is still a relevant issue for petitions to deny, that licensees have an obligation to offer nonentertainment programming addressing issues facing the community, and that the Commission will continue to inquire into the reasonableness of licensee programming decisions. See 46 Fed. Reg. 13888, 13890-13897, February 24, 1981.

Sincerely,

T.M.

T.M.

REPRODUCED FROM THE COLLECTION

OF THE MANUSCRIPT DIVISION

U.S. SUPREME COURT

P 10 n. 27

3 MAR 1981

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 79-824, 79-825, 79-826, AND 79-827

Federal Communications Commission et al., Petitioners,
 79-824 v.
 WNCN Listeners Guild et al.

Insilco Broadcasting Corporation et al., Petitioners,
 79-825 v.
 WNCN Listeners Guild et al.

American Broadcasting Companies, Inc., et al.,
 Petitioners,
 79-826 v.
 WNCN Listeners Guild et al.

National Association of Broadcasters et al., Petitioners,
 79-827 v.
 WNCN Listeners Guild et al.

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

[March —, 1981]

JUSTICE MARSHALL, dissenting.

Under §§ 309 (a) and 310 (d) of the Communications Act of 1934, 47 U. S. C. § 151 et seq. (Act), the Federal Communications Commission (Commission) may not approve an application for a radio license transfer, assignment or renewal unless it finds that such change will serve "the public interest, convenience, and necessity."¹ Any party in interest

¹The pertinent portions of 47 U. S. C. §§ 309 (a) and 310 (d) are quoted in the majority opinion, ante, at 2, n. 2.

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U. S. DEPARTMENT OF CONGRESS

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SENATE ADVISORY COMMISSION

changes pp. 1, 4, 6, 7, 13, 14

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Marshall

Circulated: _____

Recirculated: 3-19-81

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 79-824, 79-825, 79-826, AND 79-827

Federal Communications Commission et al., Petitioners,
79-824 v.
WNCN Listeners Guild et al.
Insilco Broadcasting Corporation et al., Petitioners,
79-825 v.
WNCN Listeners Guild et al.
American Broadcasting Companies, Inc., et al.,
Petitioners,
79-826 v.
WNCN Listeners Guild et al.
National Association of Broadcasters et al., Petitioners,
79-827 v.
WNCN Listeners Guild et al.

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

[March —, 1981]

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting.

Under §§ 309 (a) and 310 (d) of the Communications Act of 1934, 47 U. S. C. § 151 *et seq.* (Act), the Federal Communications Commission (Commission) may not approve an application for a radio license transfer, assignment or renewal unless it finds that such change will serve "the public interest, convenience, and necessity."¹ Any party in interest

¹The pertinent portions of 47 U. S. C. §§ 309 (a) and 310 (d) are quoted in the majority opinion, *ante*, at 2, n. 2.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

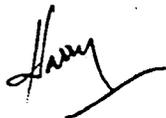
January 2, 1981

Re: Nos. 79-824 - 827, FCC v. WNCN

Dear Byron:

Please join me.

Sincerely,



Mr. Justice White

cc: The Conference

REPRODUCED FROM THE COLLECTION OF THE MANUSCRIPT DIVISION

U.S. SUPREME COURT ARCHIVES

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 31, 1980

79-824, etc. FCC v. WNCN

Dear Byron:

Please join me.

Sincerely,

Lewis

Mr. Justice White

lfp/ss

cc: The Conference

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THE MANUSCRIPT DIVISION

LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 30, 1980

Re: Nos. 79-824, 79-825, 79-826 & 79-827 FCC v. WNCN
Listeners Guild

Dear Byron:

Please join me.

Sincerely,



Mr. Justice White

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 5, 1981

Re: 79-824, 79-825, 79-826, and 79-827
FCC v. WNCN

Dear Byron:

Please join me.

Respectfully,



Justice White

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U.S. DEPARTMENT OF JUSTICE