

# The Burger Court Opinion Writing Database

## *Public Service Commission of Maryland v. Chesapeake & Potomac Telephone Co. of Maryland*

476 U.S. 445 (1986)

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

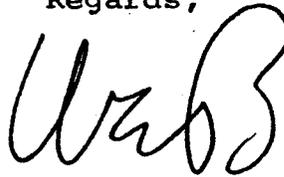
May 14, 1986

RE: 84-1362 - Public Service Commission of  
Maryland v. Chesapeake and Potomac  
Telephone Company of Maryland

Dear Bill:

I join.

Regards,



Justice Brennan

Copies to the Conference

Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **Justice Brennan**

Circulated: **MAY 05 1986**

Recirculated: \_\_\_\_\_

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 84-1362

**PUBLIC SERVICE COMMISSION OF MARYLAND,  
PETITIONER *v.* CHESAPEAKE AND POTOMAC  
TELEPHONE COMPANY OF MARYLAND**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FOURTH CIRCUIT**

[May —, 1986]

**PER CURIAM.**

We vacate the judgment of the Court of Appeals for the Fourth Circuit and remand for further proceedings consistent with the opinion in *Louisiana Public Service Commission v. Federal Communications Commission*, ante, at —.

*It is so ordered.*

MAY 5 1986

1986

Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **Justice Brennan**

Circulated:     MAY 13 1986    

Recirculated: \_\_\_\_\_

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

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**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
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[May —, 1986]

**PER CURIAM.**

We vacate the judgment of the Court of Appeals for the Fourth Circuit and remand for further proceedings consistent with the opinion in *Louisiana Public Service Commission v. Federal Communications Commission*, ante, at —.

*It is so ordered.*

JUSTICE POWELL took no part in the consideration or decision of this case.

JUSTICE O'CONNOR took no part in the consideration or decision of this case.

MAY 13 1986

Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **Justice Brennan**

Circulated: \_\_\_\_\_

**MAY 19 1986**

Recirculated: \_\_\_\_\_

SEVERAL CHANGES THROUGHOUT  
SEE PAGE 2

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 84-1362

**PUBLIC SERVICE COMMISSION OF MARYLAND,  
PETITIONER *v.* CHESAPEAKE AND POTOMAC  
TELEPHONE COMPANY OF MARYLAND**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FOURTH CIRCUIT**

[May —, 1986]

**PER CURIAM.**

We vacate the judgment of the Court of Appeals for the Fourth Circuit and remand for further proceedings consistent with the opinion in *Louisiana Public Service Comm'n v. FCC, ante*, at —.

*It is so ordered.*

JUSTICE POWELL and JUSTICE O'CONNOR took no part in the consideration or decision of this case.

MAY 19 1986

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

June 3, 1986

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

84.1362

MEMORANDUM TO THE CONFERENCE

Holds for PSC of Maryland v. C&P Telephone Co. of Md.

All four of these cases arose out of attempts by private telephone companies to enforce the FCC's Memorandum Opinion and Order (the Order), which we struck down in Louisiana Public Service Comm'n v. FCC, 84-871, as outside of the scope of the FCC's regulatory authority. The issue in PSC of Maryland was whether the FCC Order was "an order" within the meaning of 47 U.S.C. §401 (b) and whether state regulatory commissions are "persons" with that same statute and therefore within the enforcement jurisdiction of the Federal courts under the Communications Act. Because we held the underlying FCC Order invalid, we did not decide PSC of Md. on the merits, but rather GVR'd in light of La. Psc. In my view, we should follow PSC of MD., and GVR in light of La PSC the other cases that permitted private enforcement of that invalid preemption Order. Cases refusing enforcement of the Order should be denied since the underlying dispute has been resolved by La PSC.

(1) Arkansas Pub. Serv. Comm'n v. S.W. Bell Tel. Co., 84-483. In this case the CA8 directed that the FCC Order be enforced. The case should be GVR'd in light of La PSC.

(2) Cincinnati Bell Tel Co. v. PUC of Ohio, 84-623. In this action, which comes here by way of appeal, the Ohio Supreme Court refused to order enforcement of the FCC preemption Order. My recommendation is a DWSFQ.

(3) Louisiana Pub. Serv. Comm'n v. South Central Bell Co., 84-870. The CA5 ordered enforcement of the invalid FCC Order, and this case is here by way of appeal. There is, however, a question whether appellate jurisdiction lies, because of the fact that the "state statute" allegedly declared invalid by the CA5 was conduct taken by the state public service commission pursuant to state law. Accordingly, I recommend treating the jurisdictional statement as a petition for certiorari and a GVR in light of La PSC.

(4) New England T&T Co. v. PUC of Maine, 84-900. The CA1 denied enforcement of the Order. Cert. should be denied.

WJB, Jr.

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

January 31, 1986

84-1362 - PSC of Maryland  
v. C&P Telephone Co.

Dear Bill,

I would still affirm in this case.

Sincerely yours,



Justice Brennan

Copies to the Conference

AA:CM 12 MAR 28 1986

RECEIVED  
MAR 28 1986

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 6, 1986

84-1362 -

Public Service Commission of Maryland  
v. C & P Telephone Company of Maryland

Dear Bill,

Please join me.

Sincerely yours,



Justice Brennan

Copies to the Conference

513

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 6, 1986

Re: No. 84-1362-Public Service Comm. of Maryland v.  
Chesapeake and Potomac Telephone  
Co. of Maryland

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Dear Bill:

I agree with your Per Curiam.

Sincerely,

*JM*

T.M.

Justice Brennan

cc: The Conference

(12)

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 8, 1986

Re: No. 84-1362, Public Service Commission of Md.  
v. C & P Telephone Company of Maryland

Dear Bill:

Please join me in your per curiam for this case.

Sincerely,



Justice Brennan

cc: The Conference

MAY 10 1986

OFFICE MAIL

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 6, 1986

84-1362 Public Service Commission of Maryland  
v. C&P Telephone

Dear Bill:

Please add at the end of the next draft of your opinion that I took no part in the consideration or decision of this case.

Sincerely,



Justice Brennan

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

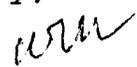
January 27, 1986

Re: No. 84-1362 Public Service Commission of  
Maryland v. Chesapeake and  
Potomac Telephone Company of  
Maryland

Dear Bill,

I finally voted to reverse in this case for the reasons outlined by John in his Conference discussion, as I understood them; i.e., there is no right of action under the statute for private parties to enforce the Federal Communications Commission directive. I would think this question would be preliminary to the issue of whether the directive applies to the parties against whom it was sought to be enforced, and so I don't presently see why the reversal in Louisiana Public Service would mean that nothing could be written in this case. I will certainly read with interest, though, anything you have to say to the contrary.

Sincerely,



Justice Brennan

cc: The Conference

82 'WV 58 W1:13

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 6, 1986

Re: No. 84-1362 Public Service Comm. of Maryland v.  
Chesapeake and Potomac Telephone Co.  
of Maryland

Dear Bill,

Please join me.

Sincerely,



Justice Brennan

cc: The Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 6, 1986

*Handwritten notes:*  
No. 2  
I agree with  
M

Re: 84-1362 - Public Service Comm. of  
Maryland v. Chesapeake and Potomac  
Telephone Co. of Maryland

Dear Bill:

Please join me.

Respectfull,

*John*

Justice Brennan

Copies to the Conference

NO. 1362-84

COMM. SER. 1362

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

May 6, 1986

No. 84-1362 Public Service Comm. of Maryland  
v. C & P Telephone Co. of Maryland

Dear Bill,

Please show at the end of the Per Curiam  
that I did not take any part in the consideration or  
decision of this case.

Sincerely,



Justice Brennan

Copies to the Conference

1986 MAY 12 10 30 AM