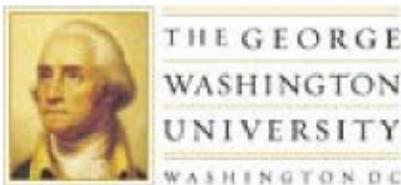


The Burger Court Opinion Writing Database

*Louisiana Public Service Commission v.
FCC*
476 U.S. 355 (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 6, 1986

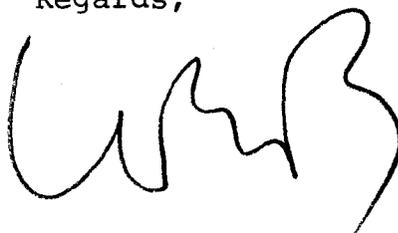
RE: 84-871) - Louisiana PSC v. FCC
84-889) - California v. FCC
84-1054) - PUC of Ohio v. FCC
84-1069) - Florida PSC v. FCC

Dear Harry:

I was ambivalent on this case at Conference but asked Bill Brennan to assign it and he is writing.

If you have any interest in writing a dissent, please feel free to proceed.

Regards,



This should have been done in January!

Justice Blackmun

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

CHAMBERS OF
THE CHIEF JUSTICE

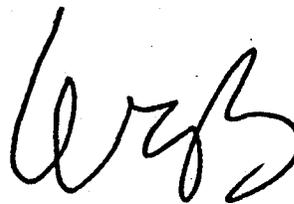
May 14, 1986

RE: 84-871) - Louisiana Public Service Commission
) - v. Federal Communications Commission
84-889) - Calif. and Public Utilities Commission
) - v. Federal Communications Commission
84-1054) - Public Utilities Commission of Ohio
) - v. Federal Communications Commission
84-1069) - Florida Public Service Commission
) - v. Federal Communications Commission

Dear Bill:

Please show me simply as "The Chief Justice dissents."

Regards,



Justice Brennan

Copies to the Conference

MAY 17 1986

U.S. SUPREME COURT

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

January 24, 1986

No. 84-871) Louisiana PSC v. FCC
No. 84-889) California v. FCC
No. 84-1054) PUC of Ohio v. FCC
No. 84-1069) Florida PSC c. FCC

Dear Chief,

I have decided to assign the above to myself for a draft of an opinion for the Court.

At Conference there was some agreement that No. 84-1362, PSC of Maryland v. C&P Telephone Co. (C&P), should be written by the same author. At first, my vote at Conference was simply to enter an order in this case directing the District Court to dismiss the action. This was because our conclusion in Louisiana PSC v. FCC, etc., denying the preemptive effect of the FCC depreciation orders would leave no valid order to be addressed or enforced in C&P. I finally did vote to affirm with four others. I have decided now, however, that I must stick to my original proposed disposition since I do not see how we can write anything in C&P after having held in Louisiana PSC that the order may not be enforced by anyone. Of course, there are only seven of us participating in this case and, therefore, my change of vote will not destroy the majority if there are still four to affirm. However, if there are four who agree with my proposed disposition

of this case, then I will circulate an order to that effect.
Otherwise, I suggest that you ought to assign it.

Sincerely,

Bill

The Chief Justice

Copies to the Conference

SEP 29 12 35 PM '52

U.S. DEPARTMENT OF JUSTICE
RECEIVED
SEP 29 1952

To: The Chief Justice
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

Nos. 84-871, 84-889, 84-1054 AND 84-1069

LOUISIANA PUBLIC SERVICE COMMISSION,
APPELLANT

84-871

v.

FEDERAL COMMUNICATIONS COMMISSION ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

CALIFORNIA AND PUBLIC UTILITIES COMMISSION
OF CALIFORNIA, ET AL., PETITIONERS

84-889

v.

FEDERAL COMMUNICATIONS COMMISSION AND
UNITED STATES

PUBLIC UTILITIES COMMISSION OF OHIO, ET AL.,
PETITIONER

84-1054

v.

FEDERAL COMMUNICATIONS COMMISSION ET AL.

FLORIDA PUBLIC SERVICE COMMISSION,
PETITIONER

84-1069

v.

FEDERAL COMMUNICATIONS COMMISSION ET AL.

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

[May —, 1986]

JUSTICE BRENNAN delivered the opinion of the Court.

In these consolidated cases, we are asked by 26 private telephone companies and the United States to sustain the holding of the Court of Appeals for the Fourth Circuit that

To: The Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

JUSTICE BRENNAN'S THROUGHOUT
SEE PAGE 2

From: Justice Brennan

Circulated: _____

Recirculated: _____
MAY 13 1986

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 84-871, 84-889, 84-1054 AND 84-1069

LOUISIANA PUBLIC SERVICE COMMISSION,
APPELLANT

84-871

v.

FEDERAL COMMUNICATIONS COMMISSION ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

CALIFORNIA AND PUBLIC UTILITIES COMMISSION
OF CALIFORNIA, ET AL., PETITIONERS

84-889

v.

FEDERAL COMMUNICATIONS COMMISSION AND
UNITED STATES

PUBLIC UTILITIES COMMISSION OF OHIO, ET AL.,
PETITIONER

84-1054

v.

FEDERAL COMMUNICATIONS COMMISSION ET AL.

FLORIDA PUBLIC SERVICE COMMISSION,
PETITIONER

84-1069

v.

FEDERAL COMMUNICATIONS COMMISSION ET AL.

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

[May —, 1986]

JUSTICE BRENNAN delivered the opinion of the Court.

In these consolidated cases, we are asked by 26 private telephone companies and the United States to sustain the holding of the Court of Appeals for the Fourth Circuit that

To: The Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

STY CHANGES THROUGHOUT.
SEE PAGES

From: Justice Brennan

Circulated: _____

Recirculated: **MAY 19 1986**

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 84-871, 84-889, 84-1054 AND 84-1069

LOUISIANA PUBLIC SERVICE COMMISSION,
APPELLANT

84-871

v.

FEDERAL COMMUNICATIONS COMMISSION ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

CALIFORNIA AND PUBLIC UTILITIES COMMISSION
OF CALIFORNIA, ET AL., PETITIONERS

84-889

v.

FEDERAL COMMUNICATIONS COMMISSION AND
UNITED STATES

PUBLIC UTILITIES COMMISSION OF OHIO, ET AL.,
PETITIONER

84-1054

v.

FEDERAL COMMUNICATIONS COMMISSION ET AL.

FLORIDA PUBLIC SERVICE COMMISSION,
PETITIONER

84-1069

v.

FEDERAL COMMUNICATIONS COMMISSION ET AL.

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

[May —, 1986]

JUSTICE BRENNAN delivered the opinion of the Court.

In these consolidated cases, we are asked by 26 private telephone companies and the United States to sustain the holding of the Court of Appeals for the Fourth Circuit that

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

June 3, 1986

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

MEMORANDUM TO THE CONFERENCE

84-871
-889
-1054
-1069
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.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 6, 1986

84-871, 84-889, 84-1054 and 84-1069 -
Louisiana Public Service Commission v. FCC, etc.

Dear Bill,

Please join me.

Sincerely yours,



Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 5, 1986

Re: Nos. 84-871, 889, 1054 and 1069- Louisiana
Public Service, California and Public
Utilities, Public Utilities Commission,
and Florida Public Service Commission v.
Federal Communications Commission

Dear Bill:

Please join me.

Sincerely,

Jm.

T.M.

Justice Brennan

cc: The Conference

May 7, 1986

Re: No. 84-871) Louisiana Public Service Comm'n v. FCC
No. 84-889) California v. FCC
No. 84-1054) Public Utilities Comm'n v. FCC
No. 84-1069) Florida Public Service Comm'n v. FCC

Dear Chief:

Let me have a few more days to absorb Bill Brennan's opinion. I may be persuaded to his point of view, or I may dissent. I shall let you know.

Sincerely,

HAB

The Chief Justice

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 8, 1986

Re: No. 84-871) Louisiana Public Service Comm'n v. FCC
No. 84-889) California v. FCC
No. 84-1054) Public Utilities Comm'n v. FCC
No. 84-1069) Florida Public Service Comm'n v. FCC

Dear Chief:

I have decided just to note my dissent in these cases. If this were October I would write, but, at this time of year, there are other matters more deserving of my attention. If Congress does not like the result the Court reaches, it can rectify the situation.

Sincerely,



The Chief Justice

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 8, 1986

Re: No. 84-871) Louisiana Public Service Comm'n v. FCC
No. 84-889) California v. FCC
No. 84-1054) Public Utilities Comm'n v. FCC
No. 84-1069) Florida Public Service Comm'n v. FCC

Dear Bill:

At the end of your opinion will you please add "JUSTICE BLACKMUN dissents." I shall not write in this case.

Sincerely,



Justice Brennan

cc: The Conference

IN QA AM 9 10 11

JUSTICE HARRY A. BLACKMUN

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 6, 1986

84-871 Louisiana Public Service Commission v. FCC

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,

A handwritten signature in cursive script, appearing to read "Lewis".

Justice Brennan

lfp/ss

cc: The Conference



CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

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

May 6, 1986

Re: No. 84-871) Louisiana Public Service Comm. v. FCC
84-889) California and Public Utilities Comm. of
) California v. FCC
84-1054) Public Utilities Comm. of Ohio v. FCC
84-1069) Florida Public Service Comm. v. FCC

Dear Bill,

Your opinion has persuaded me. I join.

Sincerely,

Justice Brennan

cc: The Conference



CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

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

May 6, 1986

Re: 84-871 - Louisiana Public Service
Comm. v. FCC
84-889 - California and Public
Utilities Comm. of California v. FCC
84-1054 - Public Utilities Comm. of
Ohio v. FCC
84-1069 - Florida Public Service
Comm. v. FCC

Dear Bill:

Please join me.

Respectfully,

Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 6, 1986

No. 84-871 Louisiana Public Service Comm.
v. Federal Communications Comm.
No. 84-889 Calif. & Public Utilities Comm.
v. Federal Communications Comm.
and United States
No. 84-1054 Public Utilities Comm. of Ohio
v. Federal Communications Comm.
No. 84-1069 Florida Public Service Comm. v.
Federal Communications Comm.

Dear Bill,

Please show at the end of your opinion that
I did not take any part in the consideration or decision
of these cases.

Sincerely,



Justice Brennan

Copies to the Conference: WMA 1 63 46