

**SUPREME COURT
OF THE UNITED STATES**

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In the Matter of:)
)
CITY OF NEW YORK, CITY OF MIAMI,)
CITY OF WHEATON AND NATIONAL)
LEAGUE OF CITIES,)
)
Petitioners)
)
v.)
)
FEDERAL COMMUNICATIONS)
DISTRICT OF COLUMBIA, ET AL)
)

No. 87-339

PAGES: 1 through 46

PLACE: Washington, D.C.

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1 IN THE SUPREME COURT OF THE UNITED STATES

2 -----x
3 CITY OF NEW YORK, CITY OF MIAMI, :
4 CITY OF WHEATON AND NATIONAL :
5 LEAGUE OF CITIES, :
6 Petitioners, :
7 v. :
8 FEDERAL COMMUNICATIONS :
9 COMMISSION, ET AL. :

No. 87-339

10 -----x
11 Washington, D.C.

12 Tuesday, March 29, 1988

13 The above-entitled matter came on for oral argument
14 before the Supreme Court of the United States at 11:39 a.m.

15 APPEARANCES:

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17 of the City of New York, New York, New York,
18 on behalf of the Petitioners.

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20 U.S. Department of Justice, Washington, D.C.,
21 on behalf of the Respondent FCC.

22 H. BARTOW FARR, III, ESQUIRE, Washington, D.C.,
23 on behalf of Respondent, National Cable Television

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1 P R O C E E D I N G S

2 (11:39 a.m.)

3 CHIEF JUSTICE REHNQUIST: We'll hear argument next in
4 No. 87-339, the City of New York, City of Miami, City of
5 Wheaton and National League of Cities versus the Federal
6 Communications Commission.

7 Mr. McGrath, you may begin whenever you're ready.

8 ORAL ARGUMENT OF STEPHEN J. MCGRATH, ESQUIRE

9 ON BEHALF OF THE PETITIONERS

10 MR. MCGRATH: Thank you, Mr. Chief Justice, and may
11 it please the Court.

12 The petitioners are here pursuant to Writ of Cert to
13 the Court of Appeals for the D.C. Circuit. And the issue is
14 the authority of the FCC to preempt through the promulgation of
15 certain minimal guidelines as to cable television signal
16 quality, to preempt all local franchisers from promulgating
17 technical standards as to signal quality.

18 Now the Commission has adopted a deregulatory
19 approach to technical standards explicitly as to signal
20 quality. Now, in the past going back to 1972, the Commission
21 itself had promulgated certain technical standards. It has
22 recognized over the years, however, that these were incomplete
23 and that they didn't cover certain problems such as ghosting of
24 a picture.

25 Nevertheless, in 1985, after the passage of the New

1 Cable Act, the Commission determined to no longer continue
2 these standards and after comments, issued a ruling in which
3 these prior standards were continued as guidelines that could
4 be included by franchisers in franchise agreements but that no
5 other standard, whether a similar standard which was more
6 stringent, or a standard for some other quality of signal
7 quality could be promulgated by local franchisers.

8 Now, the D.C. Circuit, finding more persuasive the
9 argument of the Commission that it continue to have a broad
10 delegated preemptive power which this Court had recognized in
11 the Capital Cities case under the old Communications Act, that
12 this continued under the New Cable Act, and held that as long
13 as one technical guideline was adopted by the Commission as to
14 a particular classification of channels, that they can preempt
15 any standards by local franchisers.

16 But even the Court of Appeals had some difficulty
17 with the approach of the Commission. The only classification
18 of channels for which any standards, now guidelines, had ever
19 been promulgated were the traditional broadcast channels.
20 There had never been any standards or guidelines adopted for
21 what is now the majority of cable televisions channels. The
22 satellite but unincoded broadcasts, CNN, that sort of thing,
23 the encoded broadcast, HBO, and then a fourth category that the
24 FCC had promulgated, that is, the two-A interaction.

25 For those other three types of channels, they had

1 never promulgated any standards. And the Court of Appeals was
2 troubled by that. And pointing to certain aspects which I'll
3 get into a little later in the Cable Act that it would be very
4 difficult, specifically the renewal process, be very difficult
5 for franchisers to take part and make full use of renewal
6 process without there being some standards.

7 And therefore remanded that aspect back to the
8 Commission to reconsider.

9 QUESTION: Which category does the City want to --

10 MR. MCGRATH: All categories.

11 QUESTION: Have they proposed standards for all
12 categories?

13 MR. MCGRATH: We have standards that were included in
14 the contracts back in 1983.

15 QUESTION: For all of them?

16 MR. MCGRATH: Yes, Your Honor. And these include not
17 just the four guidelines that are discussed by the Commission.
18 We put in an engineering report below which first indicates the
19 insufficiency of the ones that are guidelines under the FCC and
20 that under those guidelines, if those minimums were all that
21 were met, the resultant picture would be ghosting, would be
22 distortion, would be clearly an unacceptable picture.

23 QUESTION: Do you think the issue is different with
24 respect to the first category where the --

25 MR. MCGRATH: I don't think so, Your Honor, because

1 the Commission has taken a broader approach than the Court of
2 Appeals has approved, but we think the issue is not merely with
3 these other three categories, it's not merely --

4 QUESTION: Well, the Commission has some standards
5 for Category I, right?

6 MR. MCGRATH: Category I and none for II, III and IV.

7 QUESTION: None for the others but how about Category
8 I? Isn't the issue there different than with respect to the
9 categories that the Commission --

10 MR. MCGRATH: Not really, Justice White, because
11 under the Court of Appeals approach, they can merely through
12 the issuance of the most minimal standard fulfill their entire
13 regulatory responsibility.

14 QUESTION: And your argument is the same with respect
15 to all of them as long as they're's not any real conflict?

16 MR. MCGRATH: Yes, Justice White.

17 QUESTION: And if you can prove that in question in
18 the first category, why, it goes without saying to the other
19 categories.

20 MR. MCGRATH: Yes, Justice White

21 QUESTION: We're only talking about Category I in
22 this case, aren't we?'

23 MR. MCGRATH: I disagree, Justice Scalia.

24 QUESTION: Are you appealing II, III and IV? I
25 thought you got what you wanted on those?

1 MR. MCGRATH: No, we don't --

2 QUESTION: For the time being, anyway, until the FCC
3 decides what it's going to do?

4 MR. MCGRATH: No, the Court of Appeals remanded for
5 them to consider.

6 QUESTION: Right. Have you brought that remand here?
7 Have you objected to that remand?

8 MR. MCGRATH: Yes, Your Honor, because we think it's
9 an issue of law. It's not a mere matter for the Commission to
10 consider the interworking and how to resolve the interworking
11 of their issue standards and a requirement under the Renewal
12 Provision. It's our position that reading those is an issue of
13 law that makes it clear under all categories that we are
14 preempted only when standards are issued which could conflict
15 with our standards.

16 QUESTION: I didn't understand that.

17 MR. MCGRATH: Where none are, there's no conflict.
18 Now, we submit that the Court of Appeals applied the wrong
19 preemption standard by adopting what it called a more
20 persuasive argument, and reached a result that's in conflict
21 both with the purposes and the provisions of the Cable Act.

22 Turning first to the preemption, as Justice Brennan
23 said in the Louisiana case, that touchstone of preemption is
24 Congressional intent. And as this Court's recognized a number
25 of times, where there are two legitimate schemes of regulation,

1 Congressional intent to preempt should be clear, there should
2 be no presumption of preemption, and that where possible, those
3 two spheres of regulation should be accommodated so that they
4 can stand together.

5 Now, the Commission really has taken the position
6 that within this area of technical standards, they're allowed
7 to preempt the field. Then as Justice White remarked, our
8 position is they are not entitled to preempt the field and in
9 fact, the only preemption is where ours cannot stand together
10 with the guidelines issued by the FCC.

11 QUESTION: Mr. McGrath, will you help me with one
12 thing? I've got a little lost in this case.

13 MR. MCGRATH: Yes, sir.

14 QUESTION: What is the statutory provision on which
15 the Commission relies for its authority to adopt the
16 regulations.

17 MR. MCGRATH: Okay, it's in 624(e). Now, --

18 QUESTION: And that's the sole authority that they
19 rely on, 624(e)?

20 MR. MCGRATH: Well, they've made some oblique
21 comments indicating they may be relying upon the old
22 Communications Act, but it's our position that that's at an
23 end.

24 QUESTION: But you think they rely exclusively on
25 624(e)?

1 MR. MCGRATH: Yes, Justice Stevens.

2 QUESTION: May I get back to what we have in front of
3 us here?

4 I thought we just had Category I, not II, III, and
5 IV, because the question presented as you set it forth in your
6 brief is by a vote of 2 to 1, the Court of Appeals upheld an
7 FCC order preempting local and state cable television technical
8 standards which are more stringent, etcetera, etcetera. And
9 then it goes on and says, the questions presented are whether
10 the Court of Appeals applied an erroneous legal standard.

11 Now, on II, III and IV, it wasn't 2 to 1; it was 3 to
12 0, wasn't it? So I assumed you accepted the Court of Appeals
13 decision on those?

14 MR. MCGRATH: With respect, Justice Scalia, I don't
15 think Judge Mikva agreed that there should be a remand as to
16 how the renewal provision worked with the power under 624(e).
17 I think his position is consistent with ours, that is, the
18 standards, if there are no standards or if there are standards
19 which can stand with our local standards, there's no
20 preemption. It really doesn't matter what --

21 QUESTION: But you bring before us dispositions, not
22 legal theories, and the disposition on II, III and IV was 3 to
23 nothing. And I did not understand that to be what you were
24 complaining about. I thought you'd accepted that remand to the
25 Commission.

1 MR. MCGRATH: With respect, Justice Scalia, I believe
2 Judge Mikva would have voted to annul the rule rather than
3 merely to send it back for reconsideration.

4 QUESTION: Well, it's a very confusing question
5 presented if you're seeking to bring that here too.

6 MR. MCGRATH: Turning to the statutory, to the Cable
7 Act, itself, the Commission has pointed to one of the stated
8 purposes of the Act, that is to limit needless regulation.
9 However, the preeminent purpose is to establish a national
10 policy as to the cable industry.

11 Now, they did not choose to effectuate that policy as
12 had been done under the Communications Act through a broad,
13 vague delegation of power to the FCC. There were other
14 problems that they meant to deal with. For instance, the FCC
15 itself had moved in and out of the regulatory process and
16 that's indicated in the authoritative report that Congress that
17 was prepared for this legislation. So instead of giving the
18 FCC broad power, they clearly delineated in the Statute the
19 regulatory authority of the Federal and the state and local
20 agencies.

21 They also had the purpose of assuring that the cable
22 companies be responsive to the community needs. Accordingly,
23 they made the franchise process the preeminent regulatory
24 structure, and they set up national procedures and standards to
25 assure that those structures, that the franchisers remained

1 responsive to the needs of the localities, but at the same
2 time, applied national standards.

3 Now, looking at the most relevant statutory
4 provisions dealing with requirements for facilities and
5 equipment confirms that in that area, the regulations must be
6 intensely local. First, looking at Section 624, the Congress
7 stated --

8 QUESTION: Where are they?

9 MR. MCGRATH: In the original Act at Section 624.

10 QUESTION: I understand. Where are they in the
11 briefs?

12 MR. MCGRATH: They're in the Appendix. Starting at
13 page 116 of the Appendix to the Petition.

14 In Section 624, they've empowered franchisers to
15 include pretty much any requirement relating to facilities and
16 equipment. And the report makes it clear that just about any
17 requirement relating in any way to the operation of a cable
18 system can be required to be put into the proposals and can be
19 enforced by the franchiser.

20 The next relevant section is 625 which deals with
21 modification. Now, Congress, as the Commission itself has
22 indicated, had a concern.

23 QUESTION: Will you tell us where do you think 625 is
24 and what exact sentence it is you're quoting from so we can
25 follow it?

1 MR. MCGRATH: I'm sorry. It's 625.

2 QUESTION: 625(a)(1) appears to be on page 120 of the
3 Appendix.

4 MR. MCGRATH: Yes. And immediately thereafter at
5 page 125 is renewal.

6 QUESTION: Are we talking about the Joint Appendix?

7 MR. MCGRATH: No, the appendix to the Petition,
8 Justice O'Connor.

9 QUESTION: Oh.

10 QUESTION: So we're now on renewal in your argument?

11 MR. MCGRATH: Modification, Justice Rehnquist.

12 Now, there was a problem back in the 70's and the
13 early 80s, that both municipalities expected and the cable
14 companies hoped to meet very sky high requirements, both as to
15 services and to equipment and facilities.

16 Congress recognized this problem, passed this
17 provision, which allows upon a showing that attaining a
18 particular requirement was commercially impracticable that the
19 franchisee can be relieved of the requirement.

20 Perhaps most importantly is the next provision, the
21 renewal provision. Now, this again was to face a problem, a
22 foreseen problem that cable companies that had expended vast
23 capital resources to establish a cable system would not be
24 unreasonably denied a renewal. And the thrust of the statute
25 set out a detailed procedure controlling the renewal process,

1 specifically when there's a dispute.

2 And the whole process is intensely local. The first
3 step of the process is an inquiry into how the cable operator
4 has performed under the prior contract, and the needs of the
5 community. That's on notice, not to the Commission, but on
6 notice to the members of the locality.

7 QUESTION: Mr. McGrath, what do you do about 624(e),
8 which is on beginning at the bottom of page 118.

9 MR. MCGRATH: My point is this, Justice Scalia.

10 QUESTION: Which says, let me tell you my problem
11 with it. It says, the Commission may establish technical
12 standards relating to facilities and equipment which a
13 franchising authority may require in the franchise.

14 Now, it seems to me the natural reading of that is
15 the Commission may establish those technical standards which
16 and only which the franchising authority may require.
17 Otherwise, it seems to me, everything after, which, is
18 meaningless if we follow what you think --

19 MR. MCGRATH: Justice Scalia, do you mean that the
20 "which" refers back to the technical standards?

21 QUESTION: Right. Relating to the facilities and
22 equipment -- may establish technical standards which a
23 franchising authority may require in the franchise.

24 MR. MCGRATH: That would make their role essentially
25 advisory. That they could promulgate certain standards and it

1 would be up to the locality to include that in the franchise
2 process.

3 QUESTION: That's right. I read that as saying the
4 FCC may establish those standards that can be required.

5 MR. MCGRATH: Oh, you're reading it as limiting what
6 can be done by the franchisers.

7 QUESTION: Well, what does it mean if it doesn't
8 meant that? Which the franchising authority may require? What
9 would it mean if it doesn't mean what I just said?

10 MR. MCGRATH: Oh, no. I think one could reasonably
11 -- and that has not been our position, but one could reasonably
12 read this to say the Commission could issue advisory technical
13 standards. However, it has always been our position that they
14 can issue binding technical standards.

15 The issue for the Court to resolve is whether or not
16 that empowers them to issue certain standards and tell the
17 localities that they can't issue other technical standards
18 which can't -- which can --

19 QUESTION: I'm not saying, binding. I'm saying they
20 may establish technical standards which a franchising authority
21 may require. I think the only way to read that is they may
22 establish those standards that can be required.

23 MR. MCGRATH: With respect, Your Honor, only by --

24 QUESTION: If it only means what I think you're
25 saying, if it only means that they can issue advisory

1 standards, you wouldn't need which a franchising --

2 MR. MCGRATH: No, that's not our position, it's never
3 been. I'm just trying to point out that this is a very vague
4 and ambiguous statute and might even be reasonably read to be
5 advisory.

6 Now, we agree they can issue binding standards, but
7 binding in the sense that if we tried to pass some standard
8 that was in clear conflict, it can't stand with it, then that's
9 the extent of their preemption.

10 QUESTION: It doesn't say, which a franchising
11 authority must require. It says, it shall issue, or may
12 establish standards which a franchising authority may require.
13 If it said it may establish standards which they must require,
14 then it would mean what you say. But it doesn't say, which
15 they must require. It says it may establish standards which
16 they may require, meaning only these may they require and no
17 others may they require.

18 And that is what the FCC has done.

19 MR. MCGRATH: Well, first the actual wording of the
20 Statute, I don't think that is a reasonable reading.

21 QUESTION: Well, it says, may and not must.

22 MR. MCGRATH: With respect, Justice Scalia, it refers
23 back to the facilities and equipment. They can issue technical
24 standards relating to the facilities and equipment. It's the
25 facilities and equipment which we may include in the

1 --

2 QUESTION: Oh, you think the "which" goes with
3 facilities and equipment?

4 QUESTION: That's a very strange reading of the
5 English language, I think.

6 It's on page 118 and 119 of the Appendix.

7 MR. MCGRATH: With respect -- if you go back to
8 Section 624(a) --

9 QUESTION: Well, but why do we need to go back to
10 624(a) when we're talking about 624(e)?

11 MR. MCGRATH: All I'm trying to indicate is they
12 frequently refer to facilities and equipment that may be
13 required. That's why I read this provision, which a franchiser
14 may require, as going back to the facilities and equipment. We
15 can require any number, any different types of facilities and
16 equipment.

17 QUESTION: That's just a very strange -- here's how
18 the sentence reads: The FCC may establish technical standards
19 relating to the facilities and equipment of cable systems which
20 a franchising authority may require in the franchise. You
21 think it's perfectly logical to read that as relating as to
22 mean only that the franchising authority may require the
23 facilities and equipment to be in the franchise?

24 MR. MCGRATH: With respect, Judge, that's our reading
25 of the Statute.

1 QUESTION: You mean the FCC cannot require any
2 standards for unrequired facilities and equipment, if the
3 people put in some facilities and equipment that haven't been
4 specifically required by the municipality, the FCC cannot
5 establish standards for them? Is that a reasonable reading of
6 it?

7 MR. MCGRATH: Justice Scalia, the whole structure --

8 QUESTION: It can only establish standards for
9 required facilities and equipment and if the municipality
10 chooses not to require any, no FCC standards apply?

11 MR. MCGRATH: Well, if no jurisdiction require
12 particular facilities and equipment, I don't see what the
13 purpose of them issuing the guidelines would be.

14 QUESTION: It seems to me the, which, has to relate
15 to standards and not to facilities and equipment.

16 MR. MCGRATH: Well, getting back to the -- this is
17 the only provision on which they rely, and if they're reading
18 is given full force, they in essence read out substantial
19 provisions of 625 and 626.

20 Under 626 in the renewal process, one of the findings
21 which can be the basis for a denial of renewal is that the
22 quality of the service under the prior contract in light of the
23 reasonable needs of the community has not been satisfactory
24 into the quality of the service. And one of the particulars
25 that they point to is the signal quality.

1 Now, if the FCC can issue these minimal guidelines,
2 how are we to turn down renewal based upon the signal quality
3 if we're not able to point to specific guidelines? The Federal
4 guidelines certainly are not going to enable us to do this
5 because as we put in our affidavit below of an engineer, all
6 that's going to result following those guidelines will result
7 in a snowy picture.

8 And a cable operator can say, you can't deny my
9 renewal based upon this because I've complied with the Federal
10 guidelines. And there's a further step under the renewal
11 process. The whole process is aimed at clear determination
12 consistent with --

13 QUESTION: We'll continue there at 1:00 o'clock,
14 Mr. McGrath.

15 (Whereupon, at 12:00 noon, the hearing was recessed
16 for lunch, to reconvene the same day, Tuesday, March 29, 1988,
17 at 1:00 o'clock, in the same place.)

18 (Continued on following page.)
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A F T E R N O O N S E S S I O N

(1:00 p.m.)

1
2
3 CHIEF JUSTICE REHNQUIST: Mr. McGrath, you may
4 continue.

5 MR. MCGRATH: Thank you, Justice Rehnquist.

6 I'd like to return to the discussion of Section
7 624(e) and Justice Scalia's interpretation of that provision.

8 Now, we submit that a reading of that provision as
9 providing that there can be only technical standards where the
10 Commission has promulgated such standards is inconsistent with
11 the statute.

12 Now, first at page 116, Section 624(a)(1) empowers a
13 franchiser to require that in proposals, that the franchiser
14 may establish requirements for facilities and equipment. These
15 are highly technical matters, and we submit that only through
16 -- and technical standards would naturally be part of a
17 requirement for facilities and equipment.

18 Possibly more relevant at page 127, as I stated
19 before, there's a delineated process in which renewal can be
20 accomplished, and there are a limited number of findings which
21 can be made to support a denial of renewal. One of those
22 findings is laid out at page 127. And if I can quote it:

23 "The quality of the operator service including signal
24 quality has been reasonable in light of community needs."
25 First of all, we submit that without technical standards,

1 there's no way in which such a finding can be made. We'd be
2 left to basing unsatisfactory signal quality, assuming the
3 Commission issued no guidelines, upon subjective complaints.

4 QUESTION: Well, that just gives you more authority.

5 MR. MCGRATH: But if one reads 624(e) the way I
6 believe the Chief Justice and Justice Scalia read it, we would
7 not have the power to issue any standards unless the Commission
8 first took the affirmative step of allowing us, in essence,
9 passing their own regulation and then we'd be allowed to adopt
10 that.

11 Now, if we're only empowered to pass the regulation
12 at the whim of the Commission and the Commission decided not to
13 pass any regulations this section would in essence be read out
14 of the Statute. And we submit the Commission's also probably
15 the last entity that could determine whether signal quality is
16 satisfactory in light of community needs.

17 QUESTION: Mr. McGrath, why is that so? I mean,
18 subsection (b) includes things like quality of operator service
19 which I guess means whether maintenance people would come in,
20 and so forth, and you don't have to have any standards on that.

21 The response to consumer complaints, you don't have
22 standards on that.

23 And billing practices, there are no standards on
24 that. Why couldn't they make findings dealing with each of
25 these subjects without any standards saying what the maximum or

1 minimum was?

2 MR. MCGRATH: Justice Stevens, the main thrust of the
3 renewal procedure is to set up a due process kind of procedure.

4 QUESTION: I understand.

5 MR. MCGRATH: Whether or not it's absolutely
6 impossible to make this finding, it would seem quite
7 reasonable, and we submit compelling to be able to base the
8 determination upon whether or not they satisfied certain kinds
9 of standards.

10 QUESTION: Do you think that this means by the same
11 argument that the FCC must promulgate regulations dealing with
12 billing practices and how to respond to consumer complaints?

13 MR. MCGRATH: No, Justice Stevens, my argument is
14 just as Justice Scalia read 624(e), that the only entity that's
15 empowered to allow technical standards to be placed into
16 franchise agreements is the FCC. We submit, no, that in fact,
17 both the local franchiser in light of 626 and the general
18 provisions of 624 is similarly empowered to issue technical
19 standards.

20 QUESTION: You mean the local. But they are to the
21 extent consistent with the Title, and I suppose with
22 regulations promulgated by the FCC pursuant to the Title.

23 You don't claim a right to promulgate inconsistent
24 regulations?

25 MR. MCGRATH: No, our position --

1 QUESTION: And if there's a regulation out there
2 that says, there shall be no regulation in this area because we
3 want the free market to set the standards, then it's
4 inconsistent with the regulation.

5 MR. MCGRATH: No. Our reading of the Statute is that
6 they can issue standards, and as long as our standards are not
7 inconsistent. Not that it's inconsistent with the policy of
8 the FCC. They're empowered here to issue standards, not to set
9 broad policy.

10 QUESTION: Well, but if they have the power -- where
11 do they get the power to issue. You said you think they only
12 get the power from the 1984 Statute, don't you?

13 MR. MCGRATH: Yes, Justice Stevens.

14 QUESTION: Why is it then that their order reads, as
15 an amendment of the preexisting '72 rules rather than as a
16 brand new --

17 It seems to be we're relying on preexisting authority
18 as well as --

19 MR. MCGRATH: Well, as I mentioned earlier in my
20 argument, they do make references to the earlier Communications
21 Act, but do not clearly state in their briefs that they are
22 relying upon that Statute.

23 QUESTION: But if that Statute --

24 MR. MCGRATH: We believe to some extent that they are
25 relying on it, and that that's improper.

1 QUESTION: Now, why is that improper? Is there
2 anything in here that repeals the prior statute?

3 MR. MCGRATH: Well, in essence there was no prior
4 statute. If you'll look, the Midwest Video case, --

5 QUESTION: Well, do you contend that the '72
6 regulations were invalid, also?

7 MR. MCGRATH: Not at that time, but there's a long
8 case load going back to Southwest Cable through the two Midwest
9 Video cases and finally the Capital Cities case where this
10 Court recognized that the Commission under the Communications
11 Act had broad regulatory powers.

12 But as Justice Berger, Chief Justice Berger pointed
13 out in his concurrence of the first Midwest Video case, because
14 the Communications Act was passed ten, 20 years prior to cable
15 television, in essence it was the Commission and this Court
16 that was setting broad policy decisions that had to be made by
17 Congress.

18 Congress has made those policy decisions. Has
19 decided that regulation is not to be done broadly through a
20 vague delegation of power as pursuant to the Communications
21 Act, but under the specific guidelines of the Cable Act. The
22 Cable Act gives some duties to the Commission. It gives some
23 duties to --

24 QUESTION: You take the position that unless
25 affirmative authority for an FCC regulation can be found in the

1 Cable Act of '84, it has no such authority to regulate in this
2 area?

3 MR. MCGRATH: Yes, Your Honor, that's our position.
4 Now, I have a few minutes left.

5 I didn't have a chance before, but I'd like to
6 reserve a few minutes for rebuttal.

7 CHIEF JUSTICE REHNQUIST: Thank you, Mr. McGrath.
8 We'll hear now from you, Mr. Wallace.

9 ORAL ARGUMENT OF LAWRENCE G. WALLACE, ESQUIRE
10 ON BEHALF OF THE RESPONDENT, FCC

11 MR. WALLACE: Thank you, Mr. Chief Justice, and may
12 it please the Court.

13 Historically, the Commission applied technical
14 standards requirements to so-called class one channels which
15 are channels used to deliver broadcast signals of television
16 stations because that was the clearest authority that the
17 Commission had under the ancillary jurisdiction doctrine of the
18 Southwestern Cable case. The Commission began to regulate in
19 this area before Congress enacted any statute dealing
20 specifically with cable casting.

21 Because the technical standards that the Commission
22 adopted were principally focused on the signal both visual and
23 oral that the worst located subscriber would actually receive
24 on his set, and because the other classes of cable were coming
25 through the same system, the standards for Class I channels

1 tended also to control the quality of signals for the other
2 classes. And for that reason, the Commission never did adopt
3 standards specifically with respect to the other classes.

4 But it is now considering that question on remand in
5 this case. We did not raise any question about the correctness
6 of that remand. The question that the petitioners have
7 presented with respect to the Commission's authority to
8 prescribe maximum standards for Class I channels will
9 necessarily have a spillover effect to what the Commission can
10 do about the other classes of channels.

11 So there is a relationship there regardless of
12 whether technically the other classes are before the Court on
13 this petition. The regulation that is at issue here --

14 QUESTION: Do you understand them to be before us?

15 MR. WALLACE: I had not understood them to be before
16 the Court except in the spillover effect that would necessarily
17 occur from the decision here.

18 The FCC Regulation that is at issue explicitly
19 prohibits local franchising authorities from enforcing more
20 stringent technical standards for cable casters than the
21 standards that the FCC has prescribed. After the standards are
22 set out on the preceding pages, then on page 87 of the Appendix
23 to the Petition, the Commission Regulation is quite explicit
24 that these rule sections or less stringent versions of them may
25 be used as standards by state or local regulatory authorities,

1 no technical parameter in excess of the above rule sections may
2 be required.

3 And the way local authorities require standards is
4 through the franchising process or the renewal process in the
5 franchise agreements. So there's no doubt that the
6 Commission's intent, as its report and order explain
7 unmistakably as well, was to prevent the local authorities from
8 enforcing more stringent standards on the cable casters. And
9 this case therefore presents no occasion to consider guides to
10 interpretation that the Court has adverted to in other cases
11 that would disfavor preemption when there's some ambiguity
12 about whether preemption was intended.

13 The question in the case is whether this regulation
14 exceeds the scope of the Commission's statutory authority. We
15 do not claim that the statute itself accomplished this
16 preemption of more stringent standards or that the statute
17 required the Commission to preempt local authority in this way

18 And in this respect, the case is similar to the
19 Capital Cities against Crisp case in which the preemption
20 flowed entirely from the Commission's regulation adopted in the
21 exercise of its broad authority to further the national
22 communications policy and not from anything in the statute,
23 which at that time didn't even refer to cable casting.

24 QUESTION: You also would not agree with the reading
25 of 624(e) that I was suggesting earlier?

1 MR. WALLACE: I would agree with it entirely, Mr.
2 Justice, with the possible exception that it starts off saying
3 the Commission may establish technical standards. So that the
4 discretion is in the Commission whether to establish the
5 technical standards. And what has been remanded by the D.C.
6 Circuit in this case is the question of whether the Commission
7 could preclude local authorities from establishing their own
8 technical standards with respect to Classes II, III and IV, if
9 the Commission has not established any technical standards.

10 And of course that could be resolved by just having
11 the Commission establish some technical standards.

12 QUESTION: You don't think anything about Classes II,
13 III and IV is here?

14 MR. WALLACE: Not directly, no, sir.

15 QUESTION: Directly? Do we have to face it either
16 way we decide it? If we decide either for you or for the other
17 side, we still don't reach II or III or IV?

18 MR. WALLACE: I agree with that, Mr. Justice White.

19 QUESTION: Yes, Mr. Wallace, but is it not true that
20 your theory might make a difference, does it depend on the
21 existence of some Federal standard, there's some minimal
22 Federal standard under Title I for Title I but not under Titles
23 II, III and IV, isn't that the point?

24 MR. WALLACE: That is correct.

25 QUESTION: And the question I have in my mind is

1 whether we agree with you on Title I, do we just leave open the
2 question on Title II, III and IV, or will we necessarily have
3 decided that?

4 MR. WALLACE: Well, I think you do leave it open
5 because we did not petition from the remand.

6 QUESTION: I'm not questioning about the remand but
7 the question I have is whether without promulgating any
8 technical standards at all, could the FCC under the statute say
9 we think the best way to achieve quality signals and all the
10 rest of it is by letting the free market have full play, and
11 simply say, we will promulgate none, and we forbid the states
12 and franchises.

13 MR. WALLACE: That's what the Commission did with
14 respect to II, III and IV, and we argued in the Court of
15 Appeals that we could do that, and they said not without
16 explaining how that relates to the franchising process.

17 And now the Commission is reconsidering that, so
18 we're making no contention here.

19 QUESTION: But my question is whether you would still
20 make the same legal -- because if you're right on that, this is
21 an awfully easy case. But I don't know whether you're really
22 arguing that or not.

23 MR. WALLACE: We're not arguing it that way because
24 that question is back before the Commission and the Commission
25 has not spoken yet.

1 QUESTION: Yes, but how can you win on Class I on the
2 ground that you are urging without winning on II, III and IV?

3 MR. WALLACE: Well, on Class I, the Commission has
4 prescribed technical standards within the meaning of 624(e) on
5 page 118 of the Appendix, which says, the Commission may
6 establish technical standards. The Commission has established
7 technical standards for Class I, and those are the standards
8 which it has said a franchising authority may require. And
9 that's how we can win on Class I.

10 QUESTION: Well, but I thought you were trying to
11 defend, and I think you do, the power of the Commission to
12 preempt. Just say, just on the grounds that we can forbid
13 locals from establishing technical standards, whether they're
14 in conflict or not?

15 MR. WALLACE: But we have not argued that in this
16 Court. That is what is on remand.

17 In this Court, we have argued that the Commission has
18 established standards and said that Class I and said that the
19 local franchising authorities may not exceed them in requiring
20 standard policy.

21 QUESTION: Well, doesn't that go to the power of the
22 Commission to preempt? Because except for the power to
23 preempt, just the fact that there are regulations there
24 wouldn't preempt locals?

25 MR. WALLACE: Well, the forum of the regulation that

1 is before the Court here is a form that includes an explicit
2 preemption provision but that form is encountered in a
3 situation where a Federal Agency has concluded that certain
4 options should be preserved for the regulated industry.

5 In that respect, this case is like Fidelity Federal
6 Savings against de la Cuesta where the Federal Home Loan Bank
7 Board concluded that federal savings and loan associations
8 should be allowed the option to use due on sale clauses if they
9 wished. They didn't want to require them to use them so the
10 only way to preserve the option unambiguously was to say that
11 the option cannot be taken away by state regulatory authority.

12 QUESTION: Well, I guess, Mr. Wallace, you're also
13 taking the position that even apart from the regulation adopted
14 by the FCC preempting that any promulgation of standards by the
15 FCC would effectively preclude the franchising authority from
16 having stricter standards?

17 MR. WALLACE: If, it would depend on --

18 QUESTION: You are arguing both things? I that
19 right?

20 MR. WALLACE: It would depend on if the Commission
21 told cable casters, these are the standards that you must use,
22 and you can't deviate from them up or down, then that would
23 preclude a requirement that would require them --

24 QUESTION: Well, what if all the FCC did was adopt
25 some standards without telling anybody anything else?

1 MR. WALLACE: Then that would leave an ambiguity
2 which is not present in this case, and might lead to the
3 conclusion that the FCC did not mean to preempt local authority
4 from applying a more stringent standard.

5 But here --

6 QUESTION: Now, as I understand it, you take the
7 position that the reason the FCC wants to promulgate standards
8 of this type is to encourage competition? Is that right?

9 MR. WALLACE: Well, to encourage the development of
10 the cable industry including in the competitive environment,
11 yes. But also to encourage technological change.

12 QUESTION: At the renewal stage, I gather it makes no
13 difference if there's another cable company that can put out a
14 stronger better signal and meet high standards?

15 MR. WALLACE: But what the Commission's reports and
16 orders, both in '74 and in '85 said is that we're dealing with
17 a national market for this equipment. And it isn't just a
18 matter of competition in the particular community.

19 QUESTION: Well, I gather the competition only occurs
20 in the first instance of granting a franchise, not at the
21 renewal stage. Is that right?

22 MR. WALLACE: Well, there can be competitive
23 applicants for renewal, but one of the things that the '84 Act
24 did was to limit the discretion of local authorities to deny
25 renewals. It put in safeguards for the renewal applicant that

1 did not previously exist.

2 QUESTION: And today under that amendment now a
3 franchising authority could not deny renewal because it had a
4 better offer from some other company offering stronger and
5 better facilities, equipment, and signals?

6 MR. WALLACE: It could not. It could not if the
7 renewal applicant is meeting the standards prescribed by the
8 Commission.

9 What the reports and orders in both '74 when the
10 Commission first imposed nationwide technical standards, and in
11 '85 when the Commission concluded that it needed to prescribe a
12 standard that could not be exceeded in requirements imposed by
13 local authorities, what these reports emphasized was that a
14 multiplicity of standards would cause cost inefficiencies in
15 the industry.

16 And if some of the larger wealthier systems were to
17 move the industry to more expensive equipment, this could cause
18 problems of cost ineffectiveness for small systems that may
19 have only one or two thousand subscribers and might not be able
20 to get less expensive equipment.

21 And there was a great problem with rapid
22 technological innovation in the development of equipment that
23 standards might be prescribed in ways that would make
24 technological innovations not meet the standards. And by the
25 time of the '85 report and order, there were more than 18,500

1 local jurisdictions with franchising authority, and a diversity
2 of standards that would have to be changed in order to
3 accommodate technological innovations, and it might be
4 conflicting with one another, would impede the development of
5 cable casting and the ability of cable casting on a nationwide
6 basis to compete with other technologies.

7 QUESTION: Mr. Wallace, what about the renewal
8 procedure?

9 Supposing that New York City has given a franchise
10 and they've got 300,000 people and at the time of renewal,
11 200,000 subscribers say, these signals are awful, it's all
12 snow. Can the franchisee say, well, you can't go into that
13 franchiser because they haven't shown we haven't complied with
14 the minimum standards of the FCC?

15 MR. WALLACE: If the local system concluded that
16 notwithstanding these 200,000 complaints the cable system is in
17 fact complying with the FCC standards, then its only option
18 would be to go to the Agency and say these standards are
19 inadequate.

20 But that would be a an implausible conclusion to
21 reach. They might reach it. And the reason it would be
22 implausible is because the standards don't vary from locality
23 to locality and they're, they're, what they prescribe --

24 QUESTION: Well, what if the standards prove to
25 produce snow in every locality?

1 MR. WALLACE: But the standards are defined in terms
2 of what the subscriber will receive, the poorest located
3 subscriber, and because the signal is coming through cable, it
4 isn't affected by terrain or configuration of buildings, so
5 that if complaints were to be received in one place, comparable
6 complaints presumably would be received elsewhere.

7 QUESTION: You say the standards are described in
8 terms of what the person sees on their set?

9 MR. WALLACE: That is correct. That is the main
10 thrust of the standards. To some extent, it also defines
11 standards for transmission but the main thrust of it, and what
12 the standards are designed to assure is an acceptable quality
13 of picture and of sound on the screen of every subscriber
14 including the most poorly situated, the one farthest from the
15 head end, and the standards are all directed toward that.

16 So it would be implausible that one community would
17 be having problems that others wouldn't, if the standards were
18 being met.

19 QUESTION: Mr. Wallace, may I ask you a question
20 about the statutory authority which I think is the bottom line
21 here for the regulation.

22 As I understand your argument thus far, you rely
23 exclusively on 624(e), the section that deals with the
24 situation where the Commission has promulgated standards.

25 And as I also understand it, under Titles II, III and

1 IV, there were no Federal standards, and the Commission still
2 asserted the authority to preempt in the same way.

3 And I would like to know what the statutory authority
4 for that position was, because if that's valid, it would seem
5 to me this case would a fortiori. Can you tell me that?

6 QUESTION: Would rather do it in one bite rather than
7 two. You're going to be back up here for II, III and IV,
8 anyway, if it's all that clear, make a clean sweep of it.

9 MR. WALLACE: Not necessarily, because the
10 Commission, you might adopt standards, but --

11 QUESTION: I still would like an answer to the
12 question, if there is one.

13 MR. WALLACE: Well, one answer is 624(e) itself could
14 be interpreted to say that the Commission could decide that
15 zero is the technical standard that may be required in the
16 franchise.

17 Another possibility is to refer back to authority
18 under the Communications Act itself and the broad standards.
19 We don't think it's necessary in this case for the Court to
20 resolve whether the Commission retains authority to deal with
21 cable casting apart from the provisions of the '84 Act.
22 Although we think the answer to that is probably, yes, and I
23 would refer the Court particularly to page 79 and following of
24 the Appendix to the Petition. Since the Commission is still
25 applying to cable casters signal leakage limitations which the

1 Commission enforces itself. And those have historically been
2 based on Section 302 of the Cable Act which gives the
3 Commission authority to regulate devices that interfere with
4 radio reception.

5 And the Commission is particularly concerned about
6 leakage from cable systems that interfere with airplane
7 communications.

8 QUESTION: 302 is a Section of the '84 Act?

9 MR. WALLACE: No, it is a section of the '34 Act.

10 QUESTION: Okay, so that you do contend that we need
11 not look entirely to the '84 Act in order to find the statutory
12 --

13 MR. WALLACE: No. Well, we think the '84 Act
14 suffices of purposes of what's before the Court.

15 QUESTION: I understand that.

16 But I'm trying to find out, if we disagreed on that,
17 to what extent do you think it is appropriate to go to an
18 earlier statute to find authority.

19 MR. WALLACE: We think the authority is there as it
20 was there for the '74 report and order. We think that the
21 Congress did not in any way disapprove of the preemptive order
22 that the Commission had issued in '74.

23 QUESTION: And therefore the '84 Act did not withdraw
24 any authority that previously existed under your view?

25 MR. WALLACE: No. However, the main thing is that

1 the '84 Act mirrors what the Commission had developed as the
2 difference between its jurisdiction over technical standards
3 and the local authorities' jurisdiction over facilities and
4 equipment is elaborately developed in the Commission's
5 regulations, and the same terminological breakdown was
6 explicitly used in the '84 Act.

7 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Wallace.
8 We'll hear now from you, Mr. Farr.

9 ORAL ARGUMENT OF BARTOW FARR, III, ESQUIRE

10 ON BEHALF OF RESPONDENT, NATIONAL CABLE TELEVISION

11 MR. FARR: Thank you, Mr. Chief Justice, and may it
12 please the Court.

13 As the Commission has indicated, the issue in this
14 case is different from the issue in the usual preemption case
15 that comes before the Court, because here there is an express
16 statement by the Commission that it intends to preempt local
17 regulations.

18 The basic question then is the question that the
19 Court has been discussing which is, what is the scope of the
20 Commission's authority under the Cable Act? Is it broad enough
21 in fact to allow the Commission to issue the regulations that
22 it has.

23 We think that the authority is broad enough, for a
24 couple of reasons. First of all, the Commission was
25 specifically given authority in Section 624(e) to establish

1 technical standards. And there are no limitations in that
2 grant of authority.

3 We think that language is broad enough not just to
4 give the Commission the power to pick some numbers, which seems
5 to be the interpretation that the Cities argue for, but a power
6 also to consider the policies that go together within picking
7 the numbers. Now, the Commission, I think everybody concedes
8 could have established more detailed or more stringent
9 standards than the ones it did. But what it decided as a
10 matter of Federal policy is that the best way to serve the
11 goals to encourage better technology and to keep the cost of
12 cable services reasonable was not to have any additional
13 regulation, but in fact to let the industry itself develop the
14 standards that would achieve those goals.

15 Now, obviously, to suit that policy, there must be
16 preemption of additional local standards. Otherwise, in fact,
17 the policy couldn't be carried out.

18 QUESTION: That made a lot of sense to me until I
19 realized these standards you're talking about are performance
20 standards.

21 What you've just described makes it sound as though
22 you're describing technological standards so that the
23 municipalities won't force technology into one direction or
24 another. But you're telling me that what the Commission has
25 come up with anyway is performance standards, hasn't it?

1 MR. FARR: Well, they are performance standards that
2 involve obviously a technical component. And the question for
3 the industry of course is what kinds of facilities and
4 equipment will meet those particular performance standards. I
5 think that is what the Commission has aimed at.

6 If you look at the history of technical regulation,
7 there is a ten-year period of course where the Commission has
8 followed exactly the same policy before the Cable Act as it now
9 is pushing in the same, in the regulations since then. Before
10 that, however, from 1972 to 1974, the Commission followed
11 exactly the policies the cities would like it to have to follow
12 now.

13 QUESTION: You mean to 1984, don't you?

14 MR. FARR: No, I'm sorry. It's from '72 to '74,
15 that's right. And then in '74, they changed the regulations
16 and followed them that way for a decade.

17 But from '72 to '74, they had just this policy that
18 the cities are arguing for where they imposed minimum standards
19 and allowed the cities to go above those standards and impose
20 whatever technical standards they wanted. And in '74, the
21 Commission came back to the issue and said, this has been a
22 disaster.

23 What is happening is that we are having inconsistent
24 regulations. The cities are competing with each other to
25 outdo each other in these requirements and the opposite of what

1 we hoped would happen is happening. The cost is going up, and
2 technology is being stifled. So it changed its regulations and
3 for ten years prior to the Cable Act, followed a policy of
4 preemption.

5 Now, the particular argument that the cities make,
6 therefore, if you look at it carefully, would mean that what
7 Congress did in 1984 is it said to the Commission, you cannot
8 follow the policy that you've been following for ten years --
9 ten years where the technology of cable expanded enormously,
10 and you must go back to a policy that you tried for two years,
11 and gave up on as a failure.

12 And what we are saying is that if you look at the
13 structure of the Act, and particularly Section 624, which deals
14 with these matters, there simply is not any indication that
15 Congress intended to do that.

16 QUESTION: The language of the Act to the uninitiated
17 is a little confusing, though, because in 624(b), it says the
18 franchising authority may establish requirements for facilities
19 and equipment.

20 MR. FARR: That's correct, Justice O'Connor. Of
21 course, 624 does not make any specific reference to technical
22 standards. And I think what essentially 624 and 624(b) and (e)
23 do put together is to essentially have the same structure that
24 the FCC regulations have. The FCC didn't try to regulate many
25 aspects of facilities and equipment, like safety codes and

1 things like that, whether they met fire codes.

2 They did regulate this one area of technical
3 standards, and I think the language fairly tracks that.

4 Now, I would just like to touch briefly on the point
5 about renewal that has been made several times here, because I
6 think the cities have said, referring not to 624, but to
7 Section 626, that they really can't have a renewal process
8 unless they have their own standards. And I don't think that
9 that's so.

10 First of all, there are the FCC standards. So if you
11 are looking for a set of objective standards, the FCC standards
12 are ones that cities can use in their franchises.

13 QUESTION: Well, I guess their argument though is
14 those are so minimal that they want to do better, that they
15 don't do well enough.

16 MR. FARR: Well, Justice O'Connor, I think that that
17 points up one of the differences here. I think that there is a
18 difference between the power of the Commission essentially to
19 establish regulations and to make them preemptive which I think
20 is what this case is about.

21 I think there is a separate issue which is whether
22 these standards are adequate standards for the purposes that
23 the cities would like to use them. They are of course free to
24 do several different things if they don't like the particular
25 standards. They can go to the Commission, for example, and

1 say, we have particular local conditions which are causing us a
2 problem that makes your standards inadequate. And we would
3 like a waiver from the Commission in order to allow us to use
4 some additional standards or more detailed standards.

5 And the Commission has the power to grant that
6 waiver. They even have a procedure for it.

7 Or it can go to the Commission and say, change the
8 standard. We think the Federal standards should be higher.
9 They should be more detailed.

10 What the cities can't do though I think is what they
11 are asking to do here, which is to say regardless of what your
12 standards are, however high they are, we can always impose our
13 own idiosyncratic standards on top of those. And it is that, I
14 think, what the Commission was concerned about.

15 QUESTION: Mr. Farr, do you think they could do that
16 if the Federal standards were withdrawn entirely?

17 MR. FARR: I think that the issue would be the same
18 one, Justice Stevens. I think again that would not be a
19 question of basically the power of the Commission to regulate.

20 QUESTION: They would withdraw them but continue to
21 preempt?

22 MR. FARR: That's right. But I think the question
23 there would not be the basic question of whether they have the
24 power to preempt but whether the decision to do so was
25 arbitrary or capricious. And I think in the case of the

1 channels II, III and IV below, that is what the Court of
2 Appeals in essence said.

3 We said, you know, you have broad powers in this area
4 but at some point we are concerned that if you exercise them in
5 a particular way, that is not defensible just as a matter of
6 their exercise, but not as a matter of the existence of the
7 power in the first place.

8 QUESTION: And would you agree with Mr. Wallace the
9 power is still derived from 624(e)?

10 MR. FARR: I think that is the power that the --

11 QUESTION: Even if there is no Federal standard, just
12 the power to preempt all standards and say the free market
13 shall be the only standard?

14 MR. FARR: What I think Justice Stevens is that
15 624(e) conveys the power to the Commission to regulate in the
16 area of technical standards, and I think that is a source of
17 power for the Commission to do that. And if their explanation
18 was sufficient, if they could show for example that even
19 without standards, the goals of the Act could be met, I think
20 that would be perfectly legitimate.

21 Thank you.

22 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Farr.

23 Mr. McGrath, you have three minutes remaining.

24

25

1 ORAL ARGUMENT OF STEPHEN J. MCGRATH, ESQUIRE

2 ON BEHALF OF PETITIONERS - REBUTTAL

3 MR. MCGRATH: Thank you, Chief Justice.

4 As to Justice Stevens' inquiry as to the source of
5 the power under the Act, I'd refer you to footnote 7 in which
6 we set out the wording under the New Cable Act, and it amends
7 the Communications Act Section 2(a) to provide that the
8 provisions of this Act, the Communications Act, shall apply
9 with respect to cable service to all persons engaged within the
10 United States as provided in Title IV, the Cable Act.

11 And at footnote 16, we've indicated there was a prior
12 Senate version of that kind of amendment which might more
13 reasonably support their argument. That version was rejected
14 and this version was adopted.

15 And I want to point out that there is a claim that
16 the Federal policy is to protect the national market, that
17 there be standardization. We submit, Your Honor, that that's a
18 matter that was decided by the Congress. If one looks at 624,
19 it's clear that the standards are those that are to be
20 responsive to the community needs, it's the local franchiser.
21 Even if we don't have the power to issue technical standards,
22 our broad power to require equipment and facilities would
23 necessarily reject the argument that the effect on national
24 suppliers is a consideration under the Act.

25 Congress decided those kind of problems would be

1 dealt through the modification process. If they're not
2 commercially practicable, then they fall.

3 Finally, I'd like to point out that this claimed
4 continuance of the prior dual regulation, it's always been the
5 FCC's position, at least under the Communications Act, that it
6 would regulate the operational aspects and leave to the
7 localities some small area of protection, protection of the
8 equipment from the elements.

9 And that approach is confirmed by a reading of
10 Capital Cities. The purport to have a broad power in this
11 area. They are now trying to continue that under the Act. At
12 most, they've been given some power as to technical standards
13 but it certainly in any event is not a continuation of what was
14 being done prior the the Act.

15 Thank you, Your Honors.

16 CHIEF JUSTICE REHNQUIST: Thank you, Mr. McGrath.

17 The case is submitted.

18 (Whereupon, at 1:37 p.m., the case in the above-
19 identified matter was submitted.)
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DOCKET NUMBER: 87-339

CASE TITLE: CITY OF NEW YORK, CITY OF MIAMI, CITY OF WHEATON
AND NATIONAL LEAGUE OF CITIES v. FEDERAL COMMUNICATION
HEARING DATE: March 29, 1988

LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence
are contained fully and accurately on the tapes and notes
reported by me at the hearing in the above case before the
SUPREME COURT OF THE UNITED STATES.

Date: March 29, 1988

Margaret Daly

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