



June 27, 2005

SUPREME COURT UPHOLDS MINIMAL REGULATION OF CABLE MODEM SERVICE

(*National Cable & Telecomm. Ass'n v. Brand X Internet Svcs.*, Nos. 04-277 and 04-281)

The U.S. Supreme Court issued a decision today upholding a determination by the Federal Communications Commission (FCC) not to impose burdensome regulatory requirements on the delivery of broadband Internet access by cable companies. The decision was a victory for the Washington Legal Foundation (WLF), which filed a brief with the Court supporting the FCC's position.

The case arises from a decision by the FCC to treat cable modem service as an "information service" rather than a "telecommunications service," with the result that it would be subject to less regulation. In particular, it meant that cable modem providers (local cable television companies) would not be required to share their lines with other providers of Internet service – known as "common carrier" or "open access" requirements. The U.S. Court of Appeals for the Ninth Circuit overturned that FCC decision, relying on one of the court's own earlier precedents that predated the FCC's policy analysis, and the Supreme Court agreed to review the case.

In its ruling, the Court held that the Ninth Circuit failed to give enough deference to the FCC's interpretation of the Communications Act. The Court found that the Act's definition of "telecommunications service" was ambiguous and that the FCC's interpretation of it was permissible, notwithstanding the Ninth Circuit's differing interpretation of it in an earlier case.

WLF is a public interest law and policy center with supporters nationwide. WLF has frequently appeared as amicus in federal courts to address the proper scope of the telecommunications laws and other federal laws as they apply to the telecommunications industry and the Internet. *See, e.g., Metro-Goldwyn-Mayer Studios, Inc. v. Grokster* (No. 04-480) (supporting petition for certiorari); *Verizon Communications, Inc. v. Trinko*, 540 U.S. 398 (2004). WLF's Legal Studies Division publishes policy papers educating policymakers and practitioners regarding these subjects. *See, e.g., Kristen J. Mathews, Understanding and Complying With The "CAN-SPAM" Act* (2004); Steven G. Bradbury and Grant M. Nixon, *Court Ruling Wrongly Creates New Right To Sue Telecom Companies* (2002).

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