High Court Petitioned on Cable Net Access Rule

FCC Argues Decision May Stifle Innovation

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The Bush administration has asked the Supreme Court to overturn a decision that requires cable companies to open their high-speed Internet networks to rival online providers.

The cable industry has been pushing for an appeal of a lower court's decision, saying the ruling would dramatically reduce its incentive to continue investing in Internet services and expanding their reach.

In the past year, the U.S. Court of Appeals for the 9th Circuit in San Francisco has ruled twice that the Federal Communications Commission erred when it allowed cable companies to bar rivals from their networks. However, those decisions have been put on hold while the Bush administration considered its options. If the Supreme Court rejects the Justice Department's appeal, cable companies would be required to share their lines with rivals, potentially creating more choice for consumers and a vast new market for independent Internet service providers.

FCC Chairman Michael K. Powell issued a statement yesterday praising the administration's decision. He argued that if the lower court's ruling stands, the FCC will be forced to treat cable Internet service under the same regulatory framework that applies to the telephone industry.

"...and better service for American consumers," Powell said.
filed by a group of independent ISPs. The court ruled that the FCC erred when it ruled that high-speed Internet service was an "information service" rather than a "telecommunications service." It is a key distinction under the FCC's rules because telecommunications services, such as telephone networks, are highly regulated and must share their networks with rivals. In contrast, information services are lightly regulated and do not face the same requirement that they open their networks to rivals.

In its appeal, the Justice Department argued that if the lower court's decision is allowed to stand, it would fundamentally change a regulatory environment in which cable companies have become the most successful providers of high-speed Internet service.

"The effect of the increased regulatory burdens could lead cable operators to raise their prices and postpone or forgo plans to deploy new broadband infrastructure, particularly in rural or other underserved areas," wrote the Justice Department in its appeal.

Andrew Jay Schwartzman, president of the Media Access Project, a public interest law firm that represents a coalition of Internet providers, disputed the government's claim that regulation would lead to higher rates or slow down the rollout of new services.

Schwartzman said that Time Warner Cable has continued to grow during the past three years despite an order by the Federal Trade Commission that it share its lines with rivals. The FTC imposed the requirement as part of its approval of the merger of Time Warner and America Online in 2000.

There was debate within the Bush administration over whether to appeal the case. Some law enforcement officials were concerned that the FCC's hands-off approach would interfere with their ability to monitor communications over Internet networks. Under current rules, authorities may seek permission to monitor "telecommunications services" but are specifically banned from eavesdropping on "information services." The FCC sought to allay those concerns when it proposed subjecting high-speed data networks to the same laws covering surveillance.