

**Ninth Circuit Awards Victory to Media Access Project,  
Finds the FCC Erred in Denying Open Access Over High Speed Internet  
October 6, 2003**

In a *per curiam* opinion today, the U.S. Court of Appeals for the Ninth Circuit rapped the FCC's knuckles. The Ninth Circuit found that the FCC erred when it decided that cable Internet is an "information service" but not a "telecommunications service." The Ninth Circuit vacated the FCC's decision and sent it back to the agency.

The Ninth Circuit based its decision on an earlier case, *Portland v. AT&T*. The Ninth Circuit concluded the earlier case was binding, and that the FCC was not free to ignore it.

"This case demonstrates that the FCC ignored a U.S. Court's binding interpretation of the law. We look forward to the FCC's new proceeding that will follow the law and protect citizens using Internet over cable," said Cheryl A. Leanza, Deputy Director of Media Access Project. She continued, "under the FCC's decision, citizens using the Internet over cable were not protected from content discrimination and they do not benefit from competition among many ISPs. Now there is a chance that citizens will be protected."

Media Access Project is a non-profit public interest law firm that represented Consumer Federation of America, Consumers Union, and Center for Digital Democracy in the case. Media Access Project is also representing the lead petitioner, Prometheus Radio Project, in the pending challenge to the FCC's media ownership rule in the Third Circuit.

The FCC's decision was issued on March 15, 2002, and petitioners filed its briefs challenging the FCC's decision one year ago.

The Ninth Circuit's opinion is available at:  
[http://www.ca9.uscourts.gov/ca9/newopinions.nsf/58AF00C2122345DD88256DB7005BFAA3/\\$file/0270518.pdf?openelement](http://www.ca9.uscourts.gov/ca9/newopinions.nsf/58AF00C2122345DD88256DB7005BFAA3/$file/0270518.pdf?openelement)

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