

April 1, 2004



Statement of Andrew Jay Schwartzman, President and CEO, Media Access Project (MAP) Reacting to Ninth Circuit U.S. Court of Appeals order denying rehearing en banc in Brand X v. FCC:

Cable open access is now the law of the land. This promotes competition, free speech and innovation.

FCC Chairman Michael Powell can't have it both ways. The fatuous statement he issued today substitutes platitudes for action. If Chairman Powell really supports the President's goal of broadband deployment by 2007, he should take the same position he has taken on the recent DC Circuit case on telephone competition. That means avoiding needless delay by attempting to appeal to the Supreme Court. The FCC has now lost on this issue three times in a row. It should accept this result and implement cable open access as fast as it can.

Background:

In *Brand X v. FCC*, No. 02-70518, issued in October 2003, the U.S. Court of Appeals for the Ninth Circuit reversed the FCC's decision declaring cable modem service to be an "information service." The Court ruled that under its controlling 2001 City of Portland precedent, cable modem service is a "telecommunications service."

This ruling effectively requires "open access" for cable modem service. In other words, cable customers must be allowed the choice of any internet service provider who wishes to supply internet access. Moreover, cable operators may not deny competing internet companies access to their systems, or discriminate against them in pricing or otherwise.

Chairman Powell's statement, referred to above can be accessed at:
http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-245687A1.pdf

The *Brand X* case involved seven consolidated appeals of the FCC's decision. Media Access Project represented Consumers Union, Consumer Federation of America and the Center for Digital Democracy in their appeal.

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[Media Access Project is a 30 year-old non-profit public interest law firm which represents the public's right to receive information before the FCC and the Courts.]