



## **Taking Cable to the High Court**

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The Supreme Court announced in December that it would hear the 'Brand X' case, which puts at stake an appeals court decision that could force cable operators to open up their networks to competing ISPs. The FCC and cable industry are seeking a Supreme Court ruling to keep cable networks free from any such obligations. Such a decision would be inline with the FCC unbundling rules recently adopted ([see news](#)). In a turnabout, however, the FCC is taking the cable industry's side where in most regulatory issues the commission has shown itself to be more RBOC friendly. The FCC's support of the cable industry in this case, however, may have more to do with the commission protecting the perception of its own ability to make law.

The Bells have argued for years that cable-delivered voice should be subject to common carrier regulation. The cable industry had avoided the issue successfully, arguing that their networks were built on private capital and therefore not subject to same kinds of rules as telco networks that were subsidized with public money. The issue became more complex when, in October 2003, the 9th Circuit US Appeals Court overturned the FCC's March 2002 "information service" cable broadband classification. The three-judge panel declared cable a "telecommunications service," thus subject to common carrier regulations. In April 2004, however, the cable industry and the FCC won a delay of a related ruling that would open cable systems to rivals for Internet services. The delay will remain in effect until the U.S. Supreme Court finishes with the case, according to the 9th Circuit Court's order.

It seems as though the cable classifications from the FCC are akin to the recently adopted unbundling rules. Knowing that the unbundling requirements would end at some point, due in large part to RBOC lobbying efforts, the FCC has placed the dominant cable carriers in an analogous place. The case is expected to be heard in the spring of 2005, though whether this will be a final ruling remains unclear and seems unlikely.