

Decreased Federal Regulation of Cable Broadband

The U.S. Supreme Court has issued an important ruling that will probably result in less federal regulation of cable and other broadband access technologies. *National Cable & Telecommunications Association et al., v. Brand X Internet Services, et al.*, 545 U.S. ____ (2005). *Brand X* promises to be an important ruling for municipalities, in that a number of Vermont communities are in the process of establishing municipally operated telecommunications facilities and departments.

In a rare opinion by Justice Clarence Thomas, the Court affirmed a decision of the Federal Communications Commission (FCC) that categorizes cable broadband access as an “information service” and not as a “telecommunications service.” This difference in terminology is crucial: Telecommunication service providers are considered “common carriers” under the federal Telecommunications Act (TCA). Common carriers are subject to stringent regulation under the TCA, and are required to offer access to their transmission and distribution facilities to other telecommunications carriers for a reasonable price.

The immediate effect of this ruling is that cable Internet providers will be subject to less stringent regulation by the FCC. However, the long-term effects may take some time to become apparent, especially in a rural state like Vermont. Will cable Internet providers, which have been slow to provide service (both traditional cable and Internet) in Vermont, be more capable of doing so in a less-regulated environment? If the cable companies do indeed build infrastructure to deliver broadband services, there will be no requirement to offer common carrier access to other providers. This could severely impinge competition in the Vermont market and slow the spread of broadband access for rural Vermonters.

A few Vermont municipalities have been stepping into the cable and broadband fray to provide access to technology that the private sector has been slow to provide, if at all. How the *Brand X* ruling affects the Vermont market and the efforts of those municipalities to provide broadband access remains to be seen. We suspect the action on this issue may move to the legislative arena and recommend that you watch the National League of Cities Web site (www.nlc.org) and VLCT’s *Weekly Legislative Report* for more information on municipal cable and broadband access.

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