

Advocates Say BART Violated Telecom Law With Wireless Blocking

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The Bay Area Rapid Transit District in California violated federal telecommunications law by blocking wireless service earlier this month, a coalition of groups argues in a petition to the FCC.

"It has been settled law for decades that law enforcement agencies have no authority to order discontinuation of phone service on mere suspicion of illegal activity without due process," a coalition of digital rights groups say in papers filed on Monday with the FCC.

The groups, including Public Knowledge, the Center for Democracy & Technology and the Electronic Frontier Foundation, are asking the FCC to declare that BART's actions violated the federal Telecom Act.

BART shut down wireless service at some stations earlier this month because it was concerned that protests related to a police shooting could create unsafe conditions. "Prior to a planned protest on August 11, 2011, BART obtained credible information that led us to conclude that the safety of the BART system would be compromised," the agency said in an open letter. "Out of an overriding concern for our passengers' safety, BART made the decision to temporarily interrupt cell phone service on portions of its system."

But critics say the move raised troubling free speech issues. "Cutting off cell phone service in response to a planned protest is a shameful attack on free speech," the EFF [wrote](#) shortly after the incident. "BART officials are showing themselves to be of a mind with the former president of Egypt, Hosni Mubarak, who ordered the shutdown of cell phone service in Tahrir Square in response to peaceful, democratic protests earlier this year."

Public Knowledge's legal director, Harold Feld, recently posted a lengthy [legal analysis](#) arguing that the agency's acts were illegal under both federal telecom law and California state laws. "There is a reason we do not mess with the phone system, and why that doesn't change when the phone system is wireless," he wrote.

He said as far back as 1942, a California appeals court ruled that the state attorney general could not order the phone company to disconnect someone suspected of using the phones to run a gambling operation.

"If BART gets away with including 'we can shut down cell phone service' in its tool box, you can guarantee that other local law enforcement agencies will start copying this -- and all for the best of reasons," he wrote. "Because what could possibly go wrong when you pull the plug on a critical piece of infrastructure whenever some local police chief or city council person or whoever decides they need to do something about these 'flash mobs' or 'rioters' or whatever?"

The petition, filed on Monday, argues that BART has no authority under federal or state law to unilaterally interfere with telephone service. "Regardless of whether BART can cut off service in a manner consistent with the First Amendment -- an issue we do not address in this petition -- the fact remains that such disconnections involve willful interference with CMRS [Commercial Mobile Radio

Service] and are discontinuations of service without prior authorization based on the mere suspicion of future illegal activity," the groups argue.