

Think what you will of this article the point is to express that critics of the BART policy saw it as a potential civil rights violation and that the San Francisco Bay Area Rapid Transit at least at the time they shut off cell phone service chose to defend their decision. Like many individuals upon hearing of what they did I disagree with their decision and think they should not have done this.

BART Defends Decision To Shut Off Cell Phone Service After Civil Rights FCC Concerns

After rumors of a possible protest intended to disrupt service reached BART officials last year, they pursued a number of strategies to ensure that didn't happen. One of those strategies, cutting off cell phone service to passengers, has left riders outraged, and at least one expert calling for an FCC investigation. BART police, however, say the move was necessary to ensure the safety of all.

According to BART spokesperson Linton Johnson, both wi-fi and cell service was shut off to the Civic Center platform to the Transbay Tube Thursday night, beginning at around 5:15 PM ([According to CNET, the shutoff lasted from 4 PM-7 PM](#)). BART spokesperson Jim Allison told the Appeal that this shutdown was part of a "larger strategy" to deal with a possible protest.

At a press conference later that evening, BART Lt. Andy Alkire confirmed the cell service shutdown, saying that it was "a great tool to utilize for this specific purpose."

Public reaction at the news was swift, with people like public safety expert David Cruise [noting that](#), "if that is true.. (BART) violated some very serious @FCC rules."

Well, not quite, as we shall see -- but that doesn't mean experts in the field aren't calling for more scrutiny of this decision.

According to [a statement sent this afternoon](#), BART did not, [as some feared](#), employ [the type of cell phone blocking and jamming equipment expressly forbidden by the FCC](#).

Instead, they say "BART asked wireless providers to temporarily interrupt service at select BART stations as one of many tactics to ensure the safety of everyone on the platform." (**Update 3:53 PM:** They have since [revised their statement](#) to say "BART temporarily interrupted service at select BART stations as one of many tactics to ensure the safety of everyone on the platform.")

"That means BART did not break that specific FCC rule" says Kevin Bankston, Senior Staff Attorney of the [Electronic Frontier Foundation](#), "but I would hope -- and expect -- that the FCC

would have some serious questions for BART. It is in their area of interest." (A spokesperson for the FCC said that they could not offer comment for attribution at this time.)

Bankston's not the only official nonplussed by BART's move. According to [Cruise, the VP for the Northern California branch of APCO](#) (the Association of Public-Safety Communications Officials - International), a professional organization dedicated to the enhancement of public safety communications, "No agency has the ability to decide who can communicate and who can't. The FCC's rules are really clear on that."

"The California Dept of Corrections doesn't have the ability to restrict cell phone signals for prisoners, so I don't see how BART can for its passengers."

"The carriers' apparent unquestioning willingness to comply with this request, based only on rumors, is very troublesome," says Bankston. "I would expect and hope that the carriers would demand more (from BART) that a rumor before cutting off the ability to communication of thousands." (**Update 3:53 PM:** Bankston's remarks were based on [BART's original statement](#), not [the revised one](#))

According to BART Deputy Chief Benson H. Fairow, BART was within their rights to cut off service.

"You have to remember that cell phone reception doesn't naturally make it underground" he said. "This is a service we provide to our customers."

BART police, he said, had been tracking the online activities of activist group No Justice, No BART. A recent blog post, Fairow says, "made it clear the protesters were going to take it up a notch, and engage in illegal and possibly dangerous activities." Therefore, a "joint decision" was made to shut off BART's cell service.

According to Fairow, the statement from BART (**Update 3:53 PM:** Since revised, see update above) saying that cell carriers participated in the shutoff isn't precisely it. Fairow says that language in BART's contract with carriers allows BART to "flip a switch" to cut off service for issues of safety. A spokesperson from one of SF's major wireless carriers confirms this, and says that the carriers themselves weren't involved in the shutdown.

"Ultimately, I'm the one that implemented it," said Fairow. "It was certainly run through through channels. A lot of thought went into this."

Regardless of who made the final switch flip, Bankston is troubled by the First Amendment implications of that move. According to BART's statement, the cell phone shutdown was initiated because "organizers planning to disrupt BART service on August 11, 2011 stated they would use mobile devices to coordinate their disruptive activities and communicate about the location and number of BART Police."

Bankston says that this specificity is exactly what should concern people.

"That it was targeted specifically at blocking one type of speech" is an issue, he says. "In lawyer-speak, it's not content neutral."

According to BART, though, once you're through the fare gates, free speech isn't so free.

In their statement, they say that "paid areas of BART stations are reserved for ticketed passengers who are boarding, exiting or waiting for BART cars and trains, or for authorized BART personnel. No person shall conduct or participate in assemblies or demonstrations or engage in other expressive activities in the paid areas of BART stations, including BART cars and trains and BART station platforms."

Bankston's not buying it, though. "Regardless of whether (the paid areas are) a designated free speech forum," it's the move to disable communication for all riders that deserves scrutiny.

It "does not reflect well on the judgement of BART management or respect for their riders," Bankston says.

Fairow objects to that characterization, saying "I value free speech and will do everything I can to protect it."

"I know people are trying to make it a freedom of speech issue," Fairow said "but I had to look at it this way: would I want my wife or daughter to get kicked (onto BART tracks) in a protest that we could have avoided? Safety is our number one concern."

Nevertheless, Bankston says that this situation "did not meet the test" for a shutdown of this nature.

"This is an unprecedented situation in the US." said Bankston.

"I think it's outrageous, it's as if we're in Syria."

"This kind of blanket ban was egregiously overbroad - and, for what? It would seem that solely on the government's word on rumors, thousands of San Franciscans had their communication disabled."

Fairow believes the decision was made on more than just rumors. "I've been doing this for a long time," Fairow said. "I am 99% certain (the protest) was going to happen."

"We saw people who were clearly ready to take action, with backpacks and tools. It was a recipe for disaster."