

On Wireless Service Interruptions

Nevin Brackett-Rozinsky

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In response to FCC Docket No. 12–52, “Commission Seeks Comment on Certain Wireless Service Interruptions”, as a citizen of the United States and a user of wireless services, I submit the following comment.

Introduction

Wireless services constitute a ubiquitous mode of communication, hence their interruption abridges speech. The freedom of speech stands prominent among the fundamental precepts of liberty upon which the United States of America was founded. To abrogate that right, by granting a government agency the power to prevent communications, would substantiate an unconscionable breach of duty and a travesty against the constitution of the republic.

1. Past Practices and Precedents

Situations in which speech may properly be limited are few and far between. The classic example involves a person falsely shouting “Fire!” in a crowded theater. Even then, the mere act and fact of the shout ought not to be a crime, but if the shout directly precipitates an injurious stampede then the shouter may be held liable for the harm. It is acceptable to prosecute the inciter of such a stampede, but it is flatly unacceptable for the police to preemptively gag all people entering a theater to ensure no one shouts thusly.

Recent jurisdictions which have exercised the power to disrupt wireless services include a list of repressive nations that fail to acknowledge the right to free speech. The United States has long been a paragon of free expression, and although its exemplary record contains a few blemishes, this country can learn from those mistakes and redouble its commitment to unhindered speech.

2. Bases for Interrupting Wireless Service

There have been numerous rationalizations and attempted justifications for allowing a branch of government to block wireless service at its discretion. One such argument plays upon the fear of an explosive device being remotely detonated by cellphone. However, that line of reasoning fails the basic test of common sense. Notably, bomb makers could simply utilize triggers that detonate when cellular service is interrupted, or operate on timers, motion detectors, pressure sensors, or any number of possibilities.

For shutting down cell service to be even hypothetically practicable at stopping an explosion, one would need to know ahead of time that a bomb is in place, that it is triggered by cellphone, that it has no other triggers, and that there are no other bombs waiting for cell signal to disappear. A confluence of exceptionally improbable events would need to occur simultaneously with such an unlikely level of specific information as to render the whole situation well outside the bounds of plausibility. Moreover, Benjamin Franklin famously wrote in the year 1775, “They who can give up essential liberty to obtain a little temporary safety, deserve neither liberty nor safety.” His words ring as true today as ever: individual liberty is paramount in a free society, even more important than avoiding danger.

A second point raised for letting the government disrupt wireless communication revolves around the use of cellphones to organize impromptu gatherings and political protests. This

appalling argument invokes reasoning so specious as to defy comprehension, for it runs exactly counter not only to the letter but to the central spirit of the first amendment. The tenets of free speech, the right to assemble, and to petition the government are all threatened, indeed blatantly flouted, by such a proposition. When speech is infringed for fear of what might be said, that unambiguously contravenes the Bill of Rights, and realizes an egregious violation of the role of government in this nation.

3. Risks in Interrupting Wireless Service

Even granting that cellphones are used to plan crimes, if some people intend to break the law and they develop their plans by discussing with each other, the problem is that they want to break the law, not that they communicate. Restricting speech to make criminal behavior more difficult is facially inappropriate. Such a course of action would unjustly erode the rights of all people in order to mildly inconvenience a few who might have not yet actually broken the law. When a small number of people try to commit crimes, that is unfortunate; but inhibiting communication does nothing to ameliorate their underlying discontent, and serves instead to enact widespread censorship similar to oppressive regimes around the world.

Conversely, when a large number of people object to the content of laws and disagree with the definitions of crimes, as evidenced by mass protests, that is a sign the laws do not accurately represent the will of the people. In a democracy where the people write the laws by proxy, this means the laws should be changed to reflect the views of the populace, not that protests should be quashed as they would under a dictatorship.

In addition to the flagrant unconstitutionality of imbuing a government agency with the ability to obstruct free speech, there are pragmatic issues as well. One can readily foresee cellular service being disabled in response to any bomb threat, or any protest lacking official approval, at the command and on the judgment of whomsoever has the authority. The potential for abuse is high. Furthermore, history reminds us that bomb threats are frequently hoaxes, and real bombings are seldom preceded by any warning. Giving a governmental department control over cellphone blackouts would negatively impact the lives of all people, the benefits would be negligible, and the damage caused by undermining the constitution would be severe.

4. Scope of Interruption

The right of the people to communicate must not be infringed. Neither disabling bombs, nor discouraging protests, nor impeding crime planning, nor any other proposed justification based on the content being communicated, can surmount the ultimate folly of thwarting free speech. Those who advocate the systematic restriction of freedoms are, by definition, opponents of liberty. Those who stand up to protect individual rights are the champions of freedom.

Elected officials in this country swear, upon entering office, to “Preserve, protect and defend the Constitution of the United States.” The principles in that oath remain equally valid at all levels of government, and to embody them necessitates that one recognize and uphold the rights vested to the people by the constitution, including the freedom of speech.

Whereas criminals and bombers pose a threat to property and lives, and protest organizers to the status quo, not one of them threatens the constitution itself. A government agency that is able to unilaterally discontinue the functionality of a medium for communication, on the other hand, manifests a clear and present danger to the constitutional guarantee of free speech, and therefore must be forfended against.

5. Authority to Interrupt Service

One circumstance in which government-enforced cessation of wireless service might be reasonable is if the service itself posed an imminent danger to lives or vital national interests. It does not suffice for malevolent actors to utilize the wireless service for ill ends, the service itself must be a problem irrespective of how it is used. For example, were a certain class of wireless broadcast towers proven to cause cancer among nearby residents, the government would be justified in pursuing action to end that danger, much as anyone afflicted would be right to sue.

The proper channel for such an endeavor is the judicial system. If a wireless service could be shown in a court of law to introduce medical problems, or to pose an extinction threat to endangered species, then at the conclusion of the lawsuit or criminal trial the presiding judge would be expedient to procure an injunction requiring that service be disabled. Such a directive would apply until the wireless service could be reimplemented safely.

6. Legal Constraints on Interrupting Wireless Service

The single most relevant legal issue surrounding the interruption of wireless service is the first amendment to the United States constitution. Cases wherein speech might be limited face an extraordinarily high standard, and it behooves the justices to err on the side of liberty. Any attempt by the government to interrupt the communication of the people must be weighed against the profound disservice such an infringement entails.

Beyond the constitutional question, meaning in those rare and extreme circumstances that barring speech might be exigent, additional concerns apply to interruptions of wireless service in particular. At present, and with all probability more so in the future, cellular telephones are used by a large segment of the population as a primary means of communication. Not only does shuttering wireless service infringe on their livelihoods, but it puts people in danger by eliminating a lifeline that could be used to call for emergency assistance.

In light of the hazards inevitably associated with wireless blackouts, all efforts should be made to ensure that the specific service being blocked does not cause a drop in cellular coverage. That is to say, were a certain cell tower found to be a serious health hazard, construction of a safe replacement tower should begin as early as possible, and it should be put into operation as soon as possible to avoid a gap in service. If such a temporal interstice cannot be removed entirely, it should at least be minimally brief.

On no account should wireless service be disrupted for the purpose or with the primary effect of impeding communication. Any new laws or regulations respecting the power of government agencies to request or require that wireless service desist, should focus on the fact that all use of a wireless service for communication, regardless of substance, is speech that must not be prevented. The foremost concern is to preserve the rights of individuals. Only in cases where the wireless service itself intrinsically causes harm, may it be interrupted.

Conclusion

The United States constitution prohibits the government from abridging the freedom of speech. Blacking out cellular telephone or other wireless services would undeniably do so. Therefore I urge you to respect the constitution by disallowing the government from suppressing avenues of communication. No government agency should have the power to demand or impose an interruption of wireless services.