

CDT to FCC: Wireless Shutdowns Are Never the Right Choice

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From [Baghdad](#) [2] to [Balochistan province](#) [3] to the [Bay Area](#) [4], governments around the world are increasingly turning to the tactic of shutting down wireless communications networks to silence political protest. While the Bay Area Rapid Transit officials' actions this past August may have been more limited in scope than, say, the Internet shutdown ordered by former Egyptian President Mubarak a year ago, it still has the potential to set troubling precedent for wireless interruption in the US.

In response to BART's actions and calls for [agency action](#) [5], the Federal Communications Commission recently released a Notice of Inquiry that raised a number of questions about the legal and policy implications of wireless service interruption. CDT joined a coalition of other civil liberties groups, including Public Knowledge and the Electronic Frontier Foundation, in filing comments [yesterday](#) [6] responding to the Commission's inquiry.

Examining wireless service interruption under both the First Amendment and the Communications Act, we conclude that shutdowns of communications networks – whether mandated by government or undertaken voluntarily by private parties – threaten public safety and the public's First Amendment rights, and violate federal telecommunications law.

Free Speech

When the government acts – directly or through informal coercion – to interrupt wireless service, it is enacting a “prior restraint” on speech by suppressing communication before it occurs. As the Supreme Court has explained, prior restraints are considered “the most serious and least tolerable infringement on First Amendment rights” and the government must meet an incredibly high standard to demonstrate that a prior restraint is necessary. Even the most narrow prior restraint on speech can only be justified by demonstrating to a court that, absent the restraint, direct, immediate, and irreparable harm to the Nation or its people will surely result.

But any wireless service interruption will inevitably suppress many innocent speakers' ability to communicate. During an emergency, wireless service is critical to the public's ability to receive and transmit information about the emergency. And, as demonstrated by countless shutdowns by foreign governments, such blanket restrictions on speech pose a grave threat to legitimate expressive activity. The US government should not signal to its counterparts overseas that interruption of wireless service is an acceptable means for quelling civil unrest.

Communications Act

Wireless service interruptions, in addition to almost always being a poor policy choice and an unconstitutional prior restraint on speech, are strongly disfavored by both state and federal telecommunications law. Courts have consistently found that interruptions of phone service by state and local authorities violate both statutory and constitutional law. Furthermore, the federal Communications Act, in addition to forbidding network interruptions by government as a means of censoring particular communications, generally prohibits carriers or other private parties from interrupting or interfering with wireless service.

The Commission's authority to prevent wireless service interruptions is clear, and we ask that the Commission take this opportunity to issue clear rules confirming that, as a matter of both law and policy, state and local governments, private parties, and wireless carriers themselves cannot, and the federal government will not, interrupt wireless services in an emergency.

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- [wireless interruption](#)
- [kill switch](#)
- [BART](#)

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