



Groups File Brief Supporting Net Neutrality Rule Challenges

Free State, Cato, others say rules violate First and Fifth Amendments

By John Eggerton -- Broadcasting & Cable, 7/24/2012 2:00:35 PM

The Free State Foundation, TechFreedom, the Competitive Enterprise Institute and the Cato Institute filed a brief Monday in U.S. Court of Appeals for the D.C. circuit supporting the challenge to the FCC's network neutrality rules.

The brief says the rules are unconstitutional in two ways, as both a violation of speech rights and of property rights, which would the First and Fifth Amendments.

"However noble the FCC's intentions, its network-neutrality regulation, Preserving the Open Internet (â€˜the Order'), benefits content providers at the expense of broadband providers' constitutional rights," they write, adding that the FCC order serves no compelling government interest since it addresses harms that even the FCC concedes are theoretical.

The rules went into effect last fall, and FCC chairman Julius Genachowski has said that there have not been complaints about violations of those rules to date.

"For many years, I argued that it would be unwise as a matter of policy for the FCC to adopt net neutrality regulations. At the same time, I also argued that the FCC's action would be unlawful, even unconstitutional," said Free State Foundation president Randolph May. "This amicus brief explains clearly why this is so, and I am optimistic the court will find it persuasive."

The groups also argue that the FCC's assertion of ancillary authority to impose the rules "arrogates a boundless, and therefore dangerous, amount of power to itself."

The court will be collecting briefs from the parties into the fall, with a decision not expected until sometime in 2013.