



Groups Urge Supreme Court to Halt FCC Broadcast Censorship

By [David Kravets](#)

November 14, 2011

Technology freedom groups from across the political spectrum urged the Supreme Court on Monday to stop the Federal Communications Commission from enforcing decency standards.

The libertarian-leaning Cato Institute, the Center for Democracy & Technology, the Electronic Frontier Foundation, the left-leaning Public Knowledge and TechFreedom lodged a friend-of-the-court brief with the high court in a case in which an appeals court has ruled the FCC's decency regulations are "unconstitutionally vague" and produced a "chilling effect" on First Amendment speech.

The facts of the dispute concern FCC rulings that "fleeting expletives" uttered during the 2002 and 2003 Billboard Music Awards were indecent. First Cher then Nicole Richie cursed during the shows aired on Fox. In the other dispute, the FCC said ABC violated decency standards when the network aired a brief nude shot of Charlotte Ross' buttocks in NYPD Blue.

"From broadcasting to cable to video games to the internet, technology has empowered parents to enforce their own household standards for appropriate content. The court should extend full First Amendment protection to broadcast just as it did in 2000 for cable content, when it boldly declared that 'Technology expands the capacity to choose; and it denies the potential of this revolution if we assume the Government is best positioned to make these choices for us,'" the groups [wrote the justices](#). (.pdf)

The FCC's decency regulations are not enforced between 10 p.m. and 6 a.m., and only affect broadcast networks, not cable or internet programming.

The court has accepted in the case, [Federal Communications Commission v. Fox Television Stations](#), but has not scheduled oral arguments.

The broadcasters claim the rules, which the government announced in 2004 would be strictly enforced, are so broad and vague that it's unclear what is allowed. The appeals court in the Fox issue ruled that the FCC's policy was unconstitutionally vague because "broadcasters are left to guess whether an expletive will be deemed 'integral' to a program or whether the FCC will consider a particular broadcast a 'bona fide news interview.'" The FCC said it won't fine broadcasters for expletives used in those situations.

In the ABC case, in which the FCC fined its affiliates \$27,500 each, the appeals court said there was no "significant distinction" between the ABC and Fox cases, despite the ABC case dealing with scripted nudity.

The government on appeal argues that "the court of appeals never asked what should have been the dispositive question: Whether Fox and ABC had fair notice that the expletives and nudity in the broadcasts under review could violate the commission's indecency standards."