
Federal Appeals Court Rules in Favor of FCC

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The US Court of Appeals for the DC Circuit recently dismissed an appeal of a Federal Communications Commission (FCC) order requiring that cable operators provide digital and analog versions of some television programs, beginning February 18, 2009. The Court declined to consider arguments that the rule will create reduced space on cable for non-broadcast programmers and infringe on their free speech rights.

The FCC Deputy General Counsel argued for the government and WilmerHale counsel Jack Goodman successfully argued for the intervenors, National Association of Broadcasters and the Association for Maximum Service Television.

Challenging the FCC, were programmers such as C-SPAN, A&E Networks and the Weather Channel, who argued that the FCC's new ruling would unnecessarily eat up the cable channel's capacity, and threaten the ability of existing and new cable networks to be carried, which the programmers argued, was a violation of the First Amendment.

Ruling in favor of the FCC and WilmerHale's clients, the court decided that the programmers did not demonstrate that they would be injured by the FCC rule and rejected their arguments that the possibility of harm on any system was sufficient to allow the Court to consider their challenge. Thus, the Court ruled that the programmers lacked standing to challenge the FCC's decision.