

Groups Urge Further Investigation of Telecom's Actions Before Any Vote on Retroactive Immunity

March 12, 2008

Dear Member of Congress:

Our thirty-four organizations write to support the March 6 Dear Colleague letter on telecom immunity legislation from House Energy and Commerce Committee Chairman John Dingell, Subcommittee on Telecommunications and the Internet Chairman Edward Markey, and Subcommittee on Oversight and Investigations Chairman Bart Stupak. These respective Chairs urged Congress to uphold its duty to make an informed decision by first learning and evaluating "all the facts" prior to any vote on immunity. They specifically referenced a whistleblowing disclosure from Mr. Babak Pasdar whose affidavit was distributed last week to all House offices. We ask the House to support the chairmen and not grant retroactive immunity as part of any bill to amend the Foreign Intelligence Surveillance Act.

The Dear Colleague letter summarized a threat to privacy rights that is the bottom line in Mr. Pasdar's affidavit: That an unnamed major wireless telecommunications carrier may have given the government unmonitored access to data communications from that company's mobile devices, including e-mail, text messages, and Internet use.

Mr. Pasdar's statement describes a mysterious "Quantico Circuit" with apparently unfettered access to this carrier's mobile device data network as well as its core business network, which includes billing records and fraud-detection information. The other end of that Quantico Circuit may have had capabilities to physically track the whereabouts of innocent subscribers and monitor communications and other personal, behavioral habits. Yet, according to Mr. Pasdar, the line was configured so that the carrier could have no record of what information had been transmitted. Of equal concern was his allegation that there was no security to protect this line -- an unheard of vulnerability in a carrier environment.

Mr. Dingell, Mr. Markey, and Mr. Stupak are right. Mr. Pasdar's concerns are strikingly similar to those raised by another whistleblower, Mr. Mark Klein from AT&T. Their combined disclosures raise grave questions. For example, who was at the other end of the Quantico Circuit, and what information have they been obtaining? Does such access comport with long-standing federal law? Is the circuit legal? Is its apparent lack of security legal or wise? How long has it been in operation? Who paid for construction and operation of the Quantico Circuit? Was the telecom paid by its recipients for using the circuit? What were the terms?

You must get answers to these questions to make an informed decision about what the Senate's broad retroactive telecom immunity provision would sweep in. Congress should schedule hearings and exercise any other investigative authority

necessary to determine the truth about our privacy and telecom companies – before Congress votes on any bill that would give amnesty to these companies.

We urge you not to retreat on the immunity issue in the face of Administration scare tactics. A rush to judgment would not improve national security, and would unnecessarily jeopardize our rights to privacy. Four experts and former aides to the current Director of National Intelligence explained last week that alternate authority exists under current law to continue ongoing surveillance for up to a year, as well as to obtain new approvals as needed. No special immunity is needed, as the FISA court can order telecoms to cooperate with lawful foreign intelligence surveillance.

If Messrs. Pashar and Klein are telling the truth, they have described the tip of an iceberg. Congress must find out what is underneath. Accordingly, we urge you to investigate these matters fully and not grant retroactive immunity in the meantime.

Sincerely,

Christopher Finan, president
American Booksellers Foundation for Free Expression

Nancy Talanian, Director
Bill of Rights Defense Committee

Chief Gary Harrison
Chickaloon Village, Alaska

Lyn Hurwich, President
Circumpolar Conservation Union

Jesselyn Radack
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Matthew Fogg
Congress Against Racism and Corruption in Law Enforcement (CARCLE)

Ben Smilowitz
Disaster Accountability Project

Dr. Jim Murtagh
Doctors for Open Government (DFOG)

Jim Babka, President
DownsizeDC.org, Inc.

John Richard, Director

Essential Information

George Anderson
Ethics in Government Group, (EGG)

Mike Stollenwerk
Fairfax County Privacy Council.

Steven Aftergood, Project Director
Federation of American Scientists

Conrad Martin, Executive Director
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Tom Devine, Legal Director
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James C. Turner, Executive Director
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The Student Health Integrity Project (SHIP)

Jeb White, President and C.E.O.
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Dane von Breichenruchardt, President
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Linda Lewis, USDA Homeland Security Specialist (retired)