



# In re: National Security Administration Telecommunications Records Act Multi-District Litigation (06-1791 VRW) Case Status Update March 1, 2008

While the Multi-District Litigation (MDL) is complex, EFF's records indicate that there are currently 47 cases pending in the MDL overall, with a range of legal theories, plaintiffs and defendants. The cases are all assigned to the Chief Judge of the Federal District Court of Northern California, Hon. Vaughn Walker.

- 1. Cases Against Telecommunications Carriers.** There are 36 currently pending cases against various telecommunications carriers alleging untargeted, dragnet surveillance.
  - a. Hepting v. AT&T.** The case against the telecommunications carriers that is furthest along is EFF's case against AT&T, *Hepting v. AT&T*. The plaintiffs won the right to go forward with the case over the state secrets privilege objections of the Government in the District Court. That decision is currently pending on appeal in the Ninth Circuit Court of Appeals. It was argued on August 15, 2007.
  - b. Coordinated Complaints for Remaining Class Action Cases.** In November, 2006, Judge Walker ordered that the cases against the telecommunications carriers be coordinated for purposes of pre-trial procedures, and organized by defendant. The exceptions to this are the cases against AT&T, which will be considered for coordination until after the appeal in *Hepting v. AT&T* is decided. The carriers currently named as defendants are:
    - ✦ AT&T and various subsidiary entities <sup>1</sup>
    - ✦ Cingular Wireless (these are now AT&T subsidiaries, but are subject to a separate coordinated complaint)
    - ✦ BellSouth (these are now AT&T subsidiaries, but are subject to a separate coordinated complaint)
    - ✦ Sprint <sup>2</sup>
    - ✦ MCI/Verizon <sup>3</sup>
  - c. State Law Cases.** Three cases against Verizon and AT&T are based solely on state privacy laws and are not class actions. This includes two cases brought by the ACLU of Northern California and a case brought by an individual representing himself.
  - d. All Other Carriers Dismissed.** All other carriers (including Comcast, T-Mobile, TDS Communications, McLeod USA Telecommunications and others) have been dismissed.

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<sup>1</sup> Including AT&T Inc, AT&T Corp., AT&T Operations, Inc., SBC Long Distance LLC, Pac Bell Telephone Co., AT&T Communications of California, AT&T Teleholdings, AT&T Communications, SBC Communications Indiana Bell, Illinois Bell.

<sup>2</sup> Sprint Nextel Corp, Nextel West Corp, Sprint Communications Company, Sprint Spectrum.

<sup>3</sup> Including MCI Communications Services, Cellco Partnership dba Verizon Wireless, Hawaiian Telecom Inc dba Verizon Hawaii, Verizon Communications, Verizon Maryland, Verizon Wireless, Verizon Wireless LLC, Verizon Wireless Services

**2. State Officials Cases:** Six of the pending cases are “State Officials” cases, brought by:

- NJ Attorney General (*U.S. v. Farber*)
- Vermont Public Utilities Commissioners (*U.S. v. Volz*)
- Connecticut Public Utilities Commissioners (*U.S. v. Palermino*)
- Maine Public Utilities Commissioners (*U.S. v. Adams*)
- Missouri (2 cases) Public Utilities Commissioners (*U.S. v. Gaw, Clayton v. AT&T*)

**3. Center for Constitutional Rights v. Bush.** This case alleges targeting of the plaintiffs (lawyers and others working for Guantanamo Bay prisoners) by the admitted, targeted activities of the NSA. Telecommunications carriers are not involved.

**4. Al Haramain v. Bush.** This case alleges targeting of the plaintiffs (leaders of an Islamic charity and their lawyers) by the admitted, targeted activities of the NSA, based on an accidentally disclosed information about at least one wiretap (the exact facts are held under tight seal). Telecommunications carriers are not involved.

**5. Shubert v. Bush.** This case is a class action alleging wholesale dragnet surveillance of ordinary Americans. Telecommunications carriers are not involved. Another case, *Guzzi v. Bush*, makes the same general argument but is not a class action.

## Current Status of Cases

1. As noted above, *Hepting v. AT&T* is pending in the Ninth Circuit Appeals.
2. *Al Haramain v. Bush* was remanded to the District Court for a determination of whether FISA preempts the state secrets privilege. That question will be argued on April 23, 2008..
3. The cases against BellSouth, Sprint and Cingular cases have been voluntarily stayed, essentially pending the decision on the *Hepting* appeal.
4. The cases brought by the government against the State Officials have been stayed by the District Court pending the decision on the *Hepting* appeal.
5. *CCR v. Bush* is being amended to reflect the changes made by the Protect America Act. That is still in process and there are several other motions pending as well, which will likely be adjusted and presented again after the complaint is amended to reflect the new law.
6. The cases against *MCI/Verizon* and *Shubert* were argued before the District Court on August 30, 2007 on the issue of the application of the state secrets privilege and some additional arguments made by Verizon in favor of dismissal. No decision has yet been issued.

**Electronic Frontier Foundation [www.eff.org](http://www.eff.org)**

**Contacts: Kevin Bankston of EFF at (415) 748-8126 or Adam Eisgrau (202) 215-6884**