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ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515-6115

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CHAIRMAN

February 8, 2008

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**The Administration Owes Congress An Explanation As To
Why Phone Companies Need Immunity**

Dear Colleague:

As Chairmen of the Committee on Energy and Commerce and its Subcommittees on Telecommunications and the Internet and Oversight and Investigations, respectively, we are concerned that the President continues to ask Congress to grant telecommunications companies immunity from lawsuits alleging that certain phone companies violated the Communications Act and the Constitution by unlawfully disclosing customer billing records and subscriber information. By tying the question of lawsuit immunity to questions of national security and Foreign Intelligence Surveillance Act (FISA) reform legislation, the President has created a false choice for Congress.

The issue of immunity for phone companies that chose to cooperate with the President's warrantless wiretapping program deserves a separate and more deliberate examination by Congress. No special urgency attaches to the question of immunity other than the present Administration's general eagerness to limit tort liability and its desire to avoid scrutiny of its own actions, by either the courts or the Congress.

Concern for the potential economic burden of litigation upon a defendant is not a principled reason for Congress to interfere with the courts. More importantly, there is no reason to believe that the Federal court currently considering the lawsuits against telecommunications carriers, which have been consolidated before one judge, is proceeding rashly, failing to protect any classified information submitted to it, or otherwise jeopardizing national security. Indeed, if the appellate court sides with the Administration, the cases may be dismissed on state secrets grounds, and any justification for Congressional intervention will be obviated. If the appellate court allows the cases to proceed, we see no reason to assume that Judge Walker, a Federal judge appointed by President George H.W. Bush, cannot be trusted to sort out how and whether customer lawsuits can go forward without harming national security.

It is beyond dispute that the Government must be able to protect its citizens from terrorist threats. But before Congress should consider the extraordinary notion of telling a Federal judge to dismiss a lawsuit pending before him, Congress has a duty to find out what happened and

develop an adequate legislative record to justify such unusual interference with the normal practice of a co-equal branch of Government—the Judiciary.

For the past five months this Committee has asked, in a bipartisan manner, the phone companies and the Administration to explain whether they acted outside the bounds of the law and what would justify Congress telling a Federal judge to dismiss all lawsuits against the phone companies. The phone companies respond that the Administration has gagged and threatened them with prosecution if they respond to our inquiries. When the Committee requested that the Administration either remove the gag or provide the Committee with the relevant information, the Administration repeatedly refused. Surprisingly, even at this late date, the Administration has not deemed it important enough to respond to our repeated inquiries or even to brief the Committee Members in closed session.

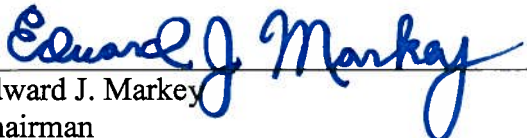
Members of Congress should not legislate in a factual vacuum. We believe serious and substantial questions concerning the past conduct of the present Administration and of the phone companies must be answered before Congress begins to consider providing immunity. We may ultimately conclude that immunity is indeed appropriate. This Administration's great discomfort with public scrutiny, however, leads us to conclude that Congressional oversight is all the more necessary in this case. For that reason, we urge you to join with us in rejecting retroactive immunity until every Member that seeks information to inform his or her vote on this issue has received enough information to make a sound public policy decision.

If you need further information, please contact John Sopko, Chief Counsel for Oversight, or Amy Levine, Senior Counsel, with the Committee on Energy and Commerce staff at ext. 5-2927.

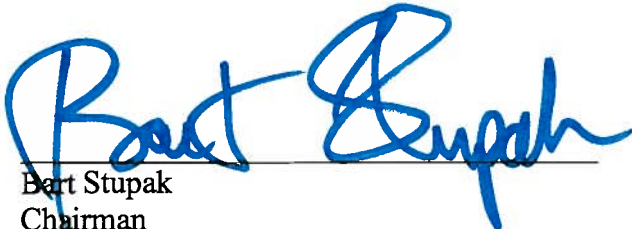
Sincerely,



John D. Dingell
Chairman



Edward J. Markey
Chairman
Subcommittee on Telecommunications
and the Internet



Bart Stupak
Chairman
Subcommittee on Oversight and Investigations