



TELEPHONE COMPANIES THAT ILLEGALLY DIVERTED THE FULL CONTENT OF BILLIONS OF DOMESTIC E-MAILS AND PHONE CALLS, BY TENS OF MILLIONS OF AMERICANS, TO THE NSA FOR ALMOST SIX YEARS AREN'T "HEROES"

Congress owes it to the tens of millions of Americans who will lose their right to have a judge decide whether their privacy was egregiously and repeatedly violated for almost six years to get the **unsentimental facts** before taking the extraordinary step of granting amnesty to companies who knowingly, willfully and repeatedly broke multiple laws. Amnesty proponents call the telephone companies who ignored Congress “heroes.” **Here are the facts:**

- **“Heroes” don’t ignore the law, and Congress’ long history of clear directives to protect the privacy of Americans’ communications, especially if the President or his Cabinet tells them to.** The Communications Act. The Wiretap Act. The Electronic Communications Privacy Act. The Stored Communications Act. FISA itself. Taken together, these statutes make unambiguously and emphatically clear that, without very specifically delineated legal authority, *it is a federal crime* for a telephone company to engage in domestic electronic surveillance, intercept Americans’ phone calls or other electronic communications, and to disclose the product of such surveillance, the content of Americans’ stored communications, or even so much as divulge records related to them. **Real heroes wrote these laws.**
- **“Heroes” don’t hide behind sham arguments that clear laws they helped write, with strict “bright line” privacy protections for their customers, somehow might not apply to the Administration’s blatantly illegal surveillance program.** The telephone companies now being sued not only were instrumental in bringing the statutes they repeatedly violated into being but, in many instances, helped to write them. After decades of experience living within them, these companies and their sophisticated in- house and outside counsel well know that they can *only* assist in surveillance that is authorized by Congress under these statutes. The Executive branch’s unilateral authorization—whether through the President, the Attorney General, or the Counsel to the President—just doesn’t cut it. As the federal judge hearing EFF’s case against AT&T recently wrote: *"AT&T cannot seriously contend that a reasonable entity in its position could have believed that the alleged domestic dragnet was legal."*
- Moreover, the telephone companies also know that that is *exactly* what Congress said in Committee report after report that it expressly intended in order to prevent recurrence of the many domestic intelligence-gathering excesses of the Executive Branch in the decades after WW II. The defendant companies also understand that existing statutes *already* immunize them when they comply with the law in good faith *and* already includes clear exceptions for true cases of emergency, particularly for surveillance undertaken in the two weeks after a war is begun. Finally, as for the claim that the defendant companies “had no choice,” don’t tell that to Qwest and Verizon Wireless both of which reportedly said to the Administration, “No, not without the authority the law requires.” **Real heroes honor their legal responsibility to stand against Executive excesses.**
- **“Heroes” don’t use their muscle to escape responsibility for their actions; they tell the truth and let the judge decide.** The telephone companies seeking complete retroactive amnesty for egregious statutory violations of the public’s privacy are spending millions in Washington to deprive tens of millions of Americans of the chance to have a federal judge decide – behind closed doors, if necessary – whether their statutory and constitutional rights have been egregiously violated. **Real heroes don’t mock the Bill of Rights by trying to bar the door to the courtroom for millions of ordinary Americans.**