



The Telecoms Knowingly and Intentionally Violated at Least 4 Statutes That Require Telecoms to Protect Customer Privacy

The statutory causes of action Congress created to hold telecoms accountable for illegal surveillance play a crucial role in providing a judicial forum for warrantless surveillance. They are:

1. **FISA:** The Foreign Intelligence Surveillance Act makes it illegal to intentionally engage in electronic surveillance under color of law or to disclose the fruits of such surveillance, knowing that it was not authorized by statute;¹
2. **WIRETAP ACT:** Also called TITLE III, the Wiretap Act prohibits any person from illegally intercepting, disclosing, using and/or divulging phone calls or electronic communications;²
3. **COMMUNICATIONS ACT:** The Communications Act prohibits communications carriers from unauthorized divulgence and/or publication of customer communications;³
4. **STORED COMMUNICATIONS ACT:** Finally, any carrier that gave NSA “call detail records violated the Stored Communications Act, which makes it unlawful for carriers to divulge the contents of customers’ stored communications⁴ and to divulge records about customer communications to a governmental entity without valid legal process;⁵

These are, of course in addition to the most important privacy protections of all:

5. **4TH AND 1ST AMENDMENTS TO THE CONSTITUTION:** The First and Fourth Amendments to the U.S. Constitution prohibit unauthorized government surveillance of our private communications. The Fourth Amendment was explicitly written in order to prevent wholesale, untargeted searches and seizures of Americans’ private papers and communications.

The four laws were specifically and intentionally intended to require the telephone companies to protect ordinary Americans’ privacy and stop gross abuses of national security surveillance power such as those that occurred after World War II and during the reign of J. Edgar Hoover at the FBI—when “surveillance was often conducted by illegal or improper means” and focused on targets like Martin Luther King and “a United States Congressman, Congressional staff member, journalists and newsmen, and numerous individuals and groups who engaged in no criminal activity and who posed no genuine threat to the national security.”⁶

Telecoms Who Broke the Law Aren’t Heroes: Congress understood that imposing civil liability for unlawful surveillance assistance to the Executive “places an additional obstacle in the path of unauthorized surveillance activity.”⁷

Companies that broke these laws and helped the NSA illegally spy on ordinary Americans are not “heroes.”

The real heroes are the companies that *refused* to help, like Verizon Wireless. As regional president Kelly Kurtzman put it: “We were asked [about phone records], but we said, no, we would not give that information, again, you know, trying to protect the privacy of our customers. We take that very seriously.”⁸

So should Congress.

NOTES

1 50 U.S.C. § 1809.

2 18 U.S.C. §§ 2511(1)(a), (1)(c), (1)(d) and (3)(a).

3 47 U.S.C. § 605.

4 18 U.S.C. §§ 2702(a)(1), (a)(2).

5 18 U.S.C. § 2702(a)(3).

6 S. Rep. No. 95-604(I), at 8 (1977) (quoting S. Select Comm. to Study Governmental Operations with Respect to Intelligence Activities, Intelligence Activities and the Rights of Americans (Book II), S. Rep. No. 94-755, at 12 (1976)).

7 H.R. Rep. No. 95-1283, at 99 (1978).

8 http://www.pbs.org/newshour/bb/science/jan-june07/cellphones_04-11.html Another example is Qwest Communications executive Joseph Nacchio.

See Scott Shane, "Ex-Phone Chief Says N.S.A. Sought Data Earlier," The New York Times (Oct. 14, 2007), <http://www.nytimes.com/2007/10/14/business/14qwest.html>