



NYCLU

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VIA FEDERAL EXPRESS

May 24, 2006

New York Public Services Commission
William M. Flynn
Empire State Plaza
Agency Building 3
Albany, NY 12223-1350

New York State Office of the Attorney General
Eliot Spitzer
Consumer Protection Bureau
120 Broadway, 3rd floor
New York, New York 10271

New York State Consumer Protection Board
Teresa A. Santiago
5 Empire State Plaza, Suite 2101
Albany, New York 12223-1556

Re: Complaint and request for investigation of AT&T and Verizon

To Chairperson Flynn, Attorney General Spitzer and Chairperson Santiago:

We write on behalf of the New York Civil Liberties Union, its 48,000 members, and the attached list of hundreds of New Yorkers to complain that New York telephone service providers AT&T and Verizon have improperly shared customer telephone records with the National Security Agency. We ask you, as government officials charged with safeguarding New York consumers from wrongdoing, to investigate this very serious invasion of privacy.

On May 11, 2006, USA Today reported that three telephone companies, AT&T, Verizon, and BellSouth, have provided the NSA with customers' personal calling details, including telephone numbers called, time of calls, date of calls, and direction of calls. See Leslie Cauley, *NSA Has Massive Database of Americans' Phone Calls*, USA Today, May 11, 2006. According to one source quoted in the article, the database is the "largest ... ever assembled in the world." The NSA's goal is "to create a database of every call ever made."

According to the article in USA Today, these telecommunications companies made available to the government information about billions of telephone calls made by millions of residential phone customers. Sources in the story state that these companies provided this information without the consent of their customers and in the absence of any legal process such as a warrant, court order, or subpoena. The customer information provided to the government is accessible not just by the NSA, but also by the Central Intelligence Agency, the Federal Bureau of Investigation, and the Drug Enforcement Agency, and can be easily matched with other databases to obtain the name and residence of each caller. This information would enable the government to track every phone call made by every New York residential customer, including the identities of the people they call and the length of each conversation.

If these allegations are true, AT&T and Verizon have systematically and flagrantly violated customers' privacy rights by sharing information that reveals customer associations, interests and other personal details. Your attention to this issue is all the more important in light of the Federal Communications Commission's announcement yesterday that it will not investigate telecommunications companies' collusion in possible illegal government spying. Given the FCC's abdication of responsibility, the privacy rights of New Yorkers rest in your hands.

Disclosing this phone record information also appears to violate AT&T and Verizon's own customer privacy agreements. The AT&T policy states that the company does not sell customer information, that it provides information in response to "court orders or subpoenas," and "abides by the federal and/or state CPNI¹ rules that apply to all telecommunication carriers." Verizon has a similar policy, which provides that information may be disclosed "if disclosure is required by law ... [and] to comply with court orders or subpoenas."

We are aware that each of these companies has issued statements in recent days regarding their participation in this record-sharing program. While BellSouth has denied participation, the two companies operating in New York have not done so. Verizon has issued ambiguous statements about its actions and the actions of its subsidiaries, and AT&T has not denied that they are cooperating with the NSA. Further, a recently issued Presidential Memorandum gives the Director of National Security the power to immunize these telecommunications companies from some liability for false statements they make in concealing matters of national security. *See* 71 Fed. Reg. 27941. The inconsistency of these statements and this shifting legal terrain underscore the need for investigation by your offices to uncover the truth.

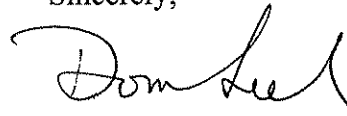
¹CPNI refers to information the telephone company obtains when it provides phone service, including number and type of lines, current charges, long distance billing records, local service subscriptions (for example, subscriptions to custom calling services), and directory assistance charges and bill summaries (for example, when and who the customer calls).

Evidence of this record-sharing program goes beyond the telephone companies' tellingly ambiguous statements. In addition to the USA Today story, the New York Times has run a series of stories describing a broader program of wiretapping by the NSA and alleging cooperation by "the leading companies" in the telecommunications industry. *See, e.g.,* Eric Lichtblau and James Risen, *Spy Agency Mined Vast Data Trove, Officials Report*, New York Times, December 24, 2005. It has been widely reported that a former AT&T employee has come forward stating that he witnessed the installation of information gathering equipment by the NSA in AT&T's switching network. *See* Matthew Stannard, *Website Publishes Purported AT&T Documents On Snooping*, San Francisco Chronicle, May 22, 2006.

In short, we have a well-founded belief that these telecommunications companies have violated their own customer service agreements as well as the privacy of millions of New Yorkers. The phone companies' actions contravene, at a minimum, New York General Business Law § 349, which prohibits deceptive acts and practices in the conduct of business. We understand that the Public Services Commission, the Office of the Attorney General and the Consumer Protection Board have the jurisdiction and the power to investigate the telecommunications companies under these laws. *See* New York Public Service Law § 5(d) (granting Public Services Commission jurisdiction over all companies owning, leasing or operating telephone service in New York); NY Gen. Bus. Law § 349(b) (giving attorney general power to enforce deceptive practices law); NY Exec. Law § 550 (granting Consumer Protection Board power to protect consumers from deceptive and misleading business practices).

We therefore request that the Public Services Commission, the Attorney General's Office and the Consumer Protection Board investigate these allegations. Should your investigation confirm these allegations, we further request that you take appropriate action to end the unlawful practice of sharing private customer phone records with the National Security Agency.

Sincerely,



Donna Lieberman
Executive Director



Corey Stoughton
Staff Attorney