



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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*Patrick C. Lynch, Attorney General*

July 24, 2006

Mr. Thomas F. Ahern  
Administrator  
Division of Public Utilities and Carriers  
89 Jefferson Blvd.  
Warwick, RI 02888

Re: Letter to Steven Brown dated July 14, 2006

Dear Mr. Ahern:

This office is in receipt of your letter dated July 14, 2006 in which the Division of Public Utilities and Carriers (the "Division") declined "to pursue an investigation" at the request of the American Civil Liberties Union, Rhode Island Chapter (ACLU). By letter dated May 24, 2006, the ACLU had requested the Division to investigate certain allegedly "wrongful acts" of Verizon and AT&T in cooperating with the National Security Agency (NSA) by providing certain information to that agency regarding the companies' respective customers and calling practices.

The Department of Attorney General (Attorney General) strongly urges the Division to reconsider its refusal to pursue an investigation. In your letter, you state, "the only case regarding the NSA surveillance to proceed beyond the complaint stage was *Heptig, et al v. AT&T Corp., et al.*" According to your letter, "this case was dismissed by the federal court..." However, in *Heptig*, the Federal District Court for the Northern District of California actually permitted the lawsuit to proceed observing that dismissing the case at the outset would sacrifice liberty for no apparent enhancement of security." *Id.* at 36.

You also state in your letter, "the state secrets privilege, *when properly asserted*, outweighs any interest a litigant or party to an administrative hearing might have in obtaining the information." (Emphasis supplied). Without initiating the administrative process to obtain the appropriate factual predicate for the ACLU's complaint, one is hard-pressed to ascertain how the Division can know at this time whether the privilege has been *properly asserted*.

Lastly, in your letter, you speculate on how a docket will play out if the Division decides to initiate an administrative investigation.

"...if the Division were to formally request Verizon and AT&T provide information regarding their cooperation (if any) with the

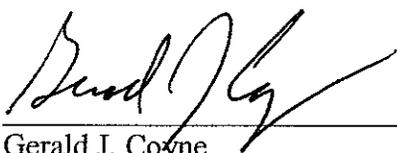
NSA program in the State of Rhode Island, we have every reason to believe that the Department of Justice would again assert the state secrets privilege to prevent them from providing such information. This in turn would prevent the Division from pursuing an effective investigation

While this office recognizes the complexity of the issues that the Division must address, as well as the obstacles that the agency may encounter in investigating the ACLU complaint, the Attorney General, like the federal district court, believes that *peremptory refusal* to establish a docket does not give existing administrative processes' or the judiciary their due. The Division is endowed with substantial economic and intellectual resources—resources that when brought to bear on the issues raised by the ACLU's complaint will allow a docket "to proceed to discovery sufficiently to assess the state secret privilege in light of the facts," and not on speculation alone. *Id.* at 35.

For the foregoing reasons, the Attorney General requests the Division to reconsider the ruling contained in its letter dated July 14, 2006, declining the request of the ACLU to pursue an investigation into the alleged wrongful acts of Verizon and AT&T for allegedly cooperating with the NSA by providing information regarding the companies' customers and calling practices.

Respectfully submitted,

Patrick C. Lynch  
Attorney General



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