



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF PUBLIC UTILITIES AND CARRIERS

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July 14, 2006

Mr. Steven Brown, Executive Director
Rhode Island Affiliate, American Civil Liberties Union
128 Dorrance Street, Suite 220
Providence, RI 02903

I write in response to your letter dated May 24, 2006 requesting the Division of Public Utilities and Carriers ("Division") investigate wrongful acts of Verizon and AT&T for allegedly cooperating with the National Security Agency ("NSA") by providing information regarding their customers and their calling practices. You claim that this is a "systematic and flagrant violation of their customers' privacy rights".

The Division need not take a position on whether or not the NSA surveillance program is legal, as that question will be decided by the federal courts. You note in your letter that other states have begun investigations of the program, and urge the Division to do the same.

Accordingly, we sent communications to both Verizon and AT&T requesting they submit a written response to your complaint. By way of response dated June 16, 2006, Verizon noted that the Federal Communications Commission ("FCC") has already rejected a similar request to investigate the alleged activity of the telecommunications carrier. AT&T, in their response of June 15, 2006, noted the same. The conclusion of the FCC was that the classified nature of the program would prevent investigation of the alleged activities, as the NSA asserted the state secrets privilege in regard to disclosing any more about the program than has already been disclosed.

The state secrets privilege, when properly asserted, outweighs any interest a litigant or party to an administrative hearing might have in obtaining the information.

Thus far, the only case regarding the NSA surveillance to proceed beyond the complaint stage was *Heptig, et al. v. AT&T Corp., et al.* This case was dismissed by the federal court, with both AT&T and Verizon arguing that the litigation should be dismissed on the grounds that plaintiffs would not have the evidence to substantiate their allegations (and defendants would not have the evidence to refute them) due to the assertion of the state secrets privilege. The court concurred with the assertion by the United States Department of Justice that “no aspect of this case can be litigated without disclosing state secrets.”

The assertion of the state secrets privilege (upheld in *Heptig*) covers the identity of which carriers have cooperated with the NSA program; the extent of such cooperation; the communications that were (or were not) intercepted; and the individuals who made the communications that were intercepted. Considering the above, it is evident that 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.

In conclusion, the Division declines to pursue an investigation of the nature you requested. The Division will continue to monitor the developments in *Heptig*, as well as other relevant litigation in the federal courts.

I appreciate you raising the concerns with the Division. Should you have any questions regarding the Division’s response, please do not hesitate to contact me or Anthony R. Marciano, Esq. (at 780-2153) for clarifications or additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Alexander W. Moore". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

cc: Jay E. Gruber, Corporate Attorney, AT&T
Alexander W. Moore, Associate General Counsel, Verizon