

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DIVISION OF PUBLIC UTILITIES AND CARRIERS
89 JEFFERSON BOULEVARD
WARWICK, RHODE ISLAND 02888

IN RE: Rhode Island Affiliate, American Civil :
Liberties Union Complaint And Request : Docket No. D-06-45
For Investigation of Verizon and AT&T :

ORDER

Whereas: On May 24, 2006 the Rhode Affiliate, American Civil Liberties Union (“ACLU”) filed a complaint and request for investigation of Verizon and AT&T. In its complaint and request for investigation, the ACLU cites a May 11, 2006 article in *USA Today* that reported that Verizon and AT&T have provided the National Security Agency (“NSA”) “with the personal calling details of customers, including telephone numbers called, time, date, and direction of calls.” The ACLU asserts that the “phone companies’ apparent action in releasing this private information amounts to a systematic and flagrant violation of their customers’ privacy rights.” The ACLU further asserts that “the sharing of this phone record information appears to violate AT&T and Verizon’s own customer privacy agreements.” The ACLU additionally cites a series of stories run by the *New York Times* describing “a broader program of wiretapping by the NSA that alleges cooperation by ‘the leading companies’ in the telecommunications industry.”

Whereas: The Division forwarded copies of the ACLU’s complaint and request for investigation to Verizon and AT&T (the “Respondents”) on May 25,

2006 and requested that the Respondents provide written responses to the allegations.

Whereas: The Division received timely written responses from AT&T and Verizon on June 15 and June 16, 2006, respectively. In their responses, the Respondents urged the Division to reject the ACLU's complaint and request for an investigation based on the extremely classified nature of the NSA program and their perceived legal inability to cooperate with the Division in the context of a formal regulatory inquiry. The Respondents cited a number of cases in support of their unyielding positions that they are prohibited, under federal law, from cooperating with the Division in any investigation involving the allegations raised by the ACLU. Indeed, the Respondents stated that they "can neither confirm nor deny whether...[they have] any relationship to the classified NSA program." The Respondents also represented that similar complaints had been filed in other states and that the matter was currently being litigated in several federal courts.

Whereas: The Division subsequently docketed the instant matter on August 16, 2006 and conducted a pre-hearing conference with the parties on September 18, 2006. During the pre-hearing conference the following agreements were reached between the parties:

1. The ACLU would retain an attorney to represent it in this docket and that his/her entry of appearance would be filed shortly;

2. That after the ACLU's attorney was identified, the parties would discuss a possible stipulation to suspend these proceedings pending some additional legal direction from the federal court(s); and
3. That in the absence of joint stipulation, the Respondents would have until November 1, 2006 to file motions to dismiss, and that the ACLU would have until December 1, 2006 to file a response to such motions.

Whereas: The following developments occurred after the pre-hearing conference: (1) Attorney John J. McConnell, Jr. filed an entry of appearance on behalf of the ACLU on October 10, 2006; (2) the Division approved requests for an extension of time for filing the aforementioned motions to dismiss, extending the deadline to November 15, 2006; and (3) Verizon and AT&T filed their respective motions to dismiss on November 15, 2006.

Whereas: On December 6, 2006, the parties submitted a "Consent Order" wherein they offer the following stipulation:

1. *In light of the threshold legal issues affecting the matters raised by this Complaint, which will be addressed by the Federal Court in In Re: National Security Agency Telecommunications Records Litigation, MDL 1791 (M.D. Cal.), this proceeding is hereby suspended pending final conclusion of the MDL litigation.*
2. *Any party may move to vacate this order of suspension for cause, and the other parties may object to such motion to vacate.*
3. *The hearing officer reserves the right to enter such orders in this matter as may be deemed necessary or proper.*

Whereas: The Division finds the foregoing Consent Order agreement reasonable.

Now, therefore it is,

(18786) ORDERED:

That the instant docket shall be held in abeyance in accordance with the stipulated agreement identified and discussed herein until further order of the Division.

Dated and Effective at Warwick, Rhode Island on December 8, 2006.

John Spirito, Jr.
Hearing Officer

APPROVED: _____
Thomas F. Ahern
Administrator