

November 13, 2006

Via Federal Express Overnight Delivery and Facsimile

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**TO: The House and Senate Leadership and Appropriations Committees
Leadership**

RE: Opposition to Immunity for Participants in NSA Spying Program

The undersigned private law firms and non-profit legal organizations, which currently represent the interests of millions of telephone and Internet subscribers, write to oppose any legislation purporting to immunize telecommunications companies that have violated the law by disclosing their customers' communications and records to the National Security Agency ("NSA").

Congress is currently considering two types of "immunity". First, provisions added to the Senate version of the Protecting Consumer Phone Records Act (S. 2389) could be read to preempt claims against telecommunications companies for violating state privacy laws. Meanwhile, H.R. 5825 includes even broader language that those companies will claim shields them from *any* legal action for assisting the NSA. There was a back-door effort to attach comparable language to the Port Security bill, and we expect similar attempts in the upcoming session.

Therefore, and for the following reasons, the undersigned strongly urge you to oppose the passage of any such "immunity" provisions:

- **Congress should allow the courts to do their job.** The telecommunications industry appears to have assisted in the greatest mass privacy invasion ever perpetrated on the American people. Those Americans are entitled to discover the extent to which their privacy was violated, and to have a court determine the legality

of the companies' conduct. Immunity would completely short-circuit this judicial process, eliminating the courts as a check on illegal collaboration between the telecommunications industry and the Executive Branch.

- **Congress should not be relegated to legislating in the dark.** It would be irresponsible for Congress to consider any kind of immunity without first investigating whether and how the law has been broken. How many people's privacy has been violated by the NSA's domestic spying? What kind of assistance have the telecommunications companies been providing to the NSA, and what were they given in return? Congress should hold hearings and get answers to these questions, or allow these questions to be answered through litigation, before it even thinks of giving anyone a free pass.
- **Congress should not needlessly increase the threat of illegal government surveillance.** Telecommunications companies' adherence to the law is the biggest practical check we have against illegal government surveillance. Giving blanket immunity to these companies, which are responsible for the privacy of countless innocent Americans, threatens to make Congress' laws a dead letter in secret meetings between telecommunications executives and government agents. Particularly considering that federal law *already* provides legal protections that adequately ensure companies' cooperation with lawful requests by the government, Congress should not take that risk.
- **Congress should respect state privacy laws.** The proposals being considered could impinge on states' rights by impairing their ability to regulate businesses operating within their jurisdictions and enforce state privacy laws. Congress should not foreclose independent investigations by state officials who are charged with enforcing those laws, or impede the progress of lawsuits based on state law.
- **Congress should not set a precedent of industry-wide blanket immunity.** If Congress favors the telecommunications companies' economic interests here, instead of the public's interest in privacy and the rule of law, other industries will inevitably demand similar special treatment from you and your colleagues whenever they are caught breaking the law.

For all the foregoing reasons, the undersigned urge the Congressional leadership to reject any attempt to include immunity provisions related to the telecommunications industry's assistance to government surveillance in any bill before Congress, and to vote against any bill that contains such provisions.

Sincerely,

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