

American Civil Liberties Union

American Civil Liberties Union Fund of Michigan

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July 26, 2006

Chairman J. Peter Lark
Commissioner Laura Chappelle
Commissioner Monica Martinez
Michigan Public Service Commission
6545 Mercantile Way, Suite 7
Lansing, MI 48911
Fax: 517-241-6217

VIA FIRST CLASS MAIL
AND FACSIMILE

Re: Formal Complaint and Request for Investigation of AT&T and Verizon

Dear Commissioners:

The American Civil Liberties Union of Michigan, on behalf of our sixteen thousand members, together with seven individual complainants, respectfully request that the Michigan Public Service Commission (MPSC) conduct a formal investigation of telecommunications service providers AT&T and Verizon. Specifically, we ask you to investigate the recent media allegations that AT&T and Verizon have systematically engaged in the disclosure of subscribers' personal information to the National Security Agency (NSA) in clear violation of their respective privacy policies.

The individual complainants are Dr. Micki Levin, Peter Armstrong, James Rodbard, Jacquelin Washington, Joseph Tuchinsky, Henry Silverman and Leonard Grossman. As you can see from the attached affidavits, many of these individuals are psychologists, attorneys, consultants and researchers who are especially concerned the breach of the phone companies' privacy policies may impact their confidential communications with clients.¹

On May 11, 2006, *USA Today* reported that the NSA, without court order or similar authority, has been "secretly collecting the phone call records of tens of millions of Americans" from the nation's largest telecommunications companies through voluntary

¹ Exhibit K, Affidavits of Peter Armstrong, James N. Rodbard, Micki L. Levin, Joseph S. Tuchinsky, Henry Silverman, Leonard L. Grossman and Jacquelin Washington.

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cooperation, offers of payment and threats of reprisal.² Since then, *USA Today* and numerous other publications have reported that this unauthorized disclosure and collection of personal calling information has included, among other details, telephone numbers, times, dates, directions and durations of billions of its subscribers' calls.³ AT&T and Verizon's participation (through its subsidiary MCI) has been confirmed by nineteen members of Congress who have been briefed on the program.⁴ This massive data-mining operation, of which AT&T and Verizon are named participants, appears to have been conducted contrary to assurances and assertions that they protect their customers' personal information.

In its online "Privacy Policy," AT&T states that "as a provider of telecommunications services we recognize that we must ensure the confidentiality of every customer's telephone calling and account information."⁵ In furtherance of this duty, the policy assures its subscribers that "we provide personal information to third parties solely in order to provide certain SBC-offered products and services" and that it will not sell Customer Proprietary Network Information (CPNI) "in any form, including billing records, calling habits or type of service- to unaffiliated third parties."⁶ None of the listed exceptions to the protection of its customers' privacy (found in the "Information we Disclose to Third Parties" subsection) includes the type of information AT&T has alleged to have disclosed to the NSA without court order, warrant, or subpoena.⁷

The online "Privacy Policy" of Verizon contains similar assurances that its "commitment to protecting your privacy remains as strong as ever" and that information it obtains about its customers' calling patterns is used for "business purposes only."⁸ As with AT&T, Verizon claims that unauthorized disclosure of personal information to outside parties is prohibited "as a rule" and the stipulated exceptions to this policy cannot be interpreted to include its reported dissemination of such data to the NSA in absence of court order or corresponding legal process.⁹

In light of these privacy policies, AT&T and Verizon's furtherance of the NSA's data-mining efforts seem irreconcilable with the clear intent and purpose of their respective guarantees of customer privacy and, as such, are in violation of the August 1, 2005 Order in Case No. U-14435 and MCL 484.2502(1)(a) and (h) of the Michigan Telecommunications Act (MTA). Michigan law states "a provider shall ensure that all

² Exhibit A, Leslie Cauley, "NSA has Massive Database of Americans' Phone Calls," *USA Today* (May 11, 2006).

³ Exhibit B, John Markoff, "Questions Raised for Phone Giants in Spy Data Furor," *New York Times* (May 13, 2006) and Exhibit C, John Diamond and Leslie Cauley, "Pre-9/11 Records Help Flag Suspicious Calling; NSA Computers Employ Template to Identify Possible Terror Activity," *USA Today*, (May 23, 2006).

⁴ Exhibit J, Susan Page, "Lawmakers: NSA Database Incomplete," *USA Today* (June 30, 2006).

⁵ Exhibit D, AT&T Privacy Policy, accessed on May 25, 2006 at <http://att.sbc.com/gen/privacy-policy?pid=2506>.

⁶ *Id.*

⁷ *Id.*

⁸ Exhibit E, Verizon Privacy Policy, accessed on May 25, 2006 at <https://www22.verizon.com/about/privacy/customer>.

⁹ *Id.*

information provided to customers and others is accurate and in compliance with commission rules and the provider's tariff. A provider shall not make a statement to a customer that the provider knows to be untrue."¹⁰ Section 502(1)(a) and (h) of the MTA state, respectively, that a provider of a telecommunications service shall not "make a statement or representation, including the omission of material information, regarding the rates, terms, or conditions of providing a telecommunication service that is false, misleading, or deceptive," nor "cause a probability of confusion or a misunderstanding as to the legal rights, obligations, or remedies of a party to a transaction by making a false, deceptive, or misleading statement or by failing to inform the customer of a material fact, the omission of which is deceptive or misleading."¹¹ Therefore, by providing and perhaps selling customer information to the NSA without permission or appropriate legal authority and in violation of privacy guarantees to their subscribers, AT&T and Verizon have participated in consumer fraud that the aforementioned rules prohibit.

Attempts to remedy this matter independently have proven unsuccessful. A phone call placed to Verizon on May 26, 2006 yielded a prepared statement that does not fully answer the allegations.¹² A phone call placed to AT&T on the same day resulted in a verbal refusal to comment. This intransigence is unfortunately in accord with the behavior of the relevant telecommunications companies and certain federal government agencies since the *New York Times* first exposed the extent to which secret surveillance of the American public has been illegally and exponentially expanded in the past five years.¹³ Indeed, this continuing erosion of privacy safeguards, in conjunction with a lack of transparency as to the process and extent, shows no signs of abating. The most recent media reports on this issue reveal that the Justice Department has been pressuring internet companies to significantly expand their data retention of individual web usage- an unprecedented proposal that indicates further how consumer information that was previously considered private is no longer.¹⁴ Reaction and outrage to this Government surveillance in general, and the telecommunications companies' complicity in these efforts in particular, has been mounting. Currently, over twenty ACLU state affiliates have filed complaints with their respective Public Utility Commissions (PUCs) and PUCs in the states of Maine, Vermont and Washington have already begun formal proceedings. State Attorney Generals are exploring legal action as well.¹⁵

In conclusion, due to the inconsistency of AT&T and Verizon's information, statements, representations, and guarantees to its subscribers about the private status of their personal information with the reported disclosure of this exact information to the NSA, there

¹⁰See 1999 AC, R 484.535, approved in Order U-14435 and since adopted as part of the Michigan Administrative Code and MTA; http://www.cis.state.mi.us/mpsc/orders/comm/2005/u-14435-rules_08-01-2005.pdf.

¹¹ <http://www.cis.state.mi.us/mpsc/comm/telecom/pa179.pdf>.

¹² Exhibit F, Verizon Prepared Statement, faxed to the ACLU of Michigan on May 26, 2006.

¹³ Exhibit G, Eric Lichtblau and James Risén, "Spy Agency Mined Vast Data Trove, Officials Report," *New York Times* (December 24, 2005).

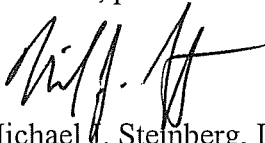
¹⁴ Exhibit H, Saul Hansell and Eric Lichtblau, "U.S. Wants Companies to Keep Web Usage Records," *New York Times* (June 2, 2006).

¹⁵ Exhibit I, David W. Chen and Matt Richtel, "New Jersey Demands Data on Phone Call Surveillance and is Sued by U.S.," *New York Times* (June 16, 2006).

appears to be well-founded concern that these telecommunications companies have perpetrated customer fraud and affirmatively violated provisions of Michigan law that guard against such conduct. Such a breach is particularly troubling in light of the fact that AT&T and Verizon currently control the vast majority of Michigan's Basic Local Exchange Market.¹⁶ We therefore request, pursuant to the jurisdiction and authority granted the MPSC by Sections 201, 202, 203, 205, 213, and 503 of the MTA, that you:

1. Conduct a formal investigation into this conduct;
2. If such conduct on the part of AT&T and Verizon is determined prohibited, issue an order to cease the disclosure of personal information; and
3. Order appropriate relief.

Please find attached relevant supporting exhibits to this formal complaint. Thank you for protecting the privacy of Michigan consumers and ensuring that AT&T and Verizon comply with their own privacy policies. If you seek further information or have any questions, please contact Michael J. Steinberg at the address or number below.



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¹⁶ http://www.michigan.gov/documents/statusoftelecomcompetition2005_161126_7.pdf