

Just Between Us

Telecoms and the Bush administration talked about how to keep their surveillance program under wraps.

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The Bush administration is refusing to disclose internal e-mails, letters and notes showing contacts with major telecommunications companies over how to persuade Congress to back a controversial surveillance bill, according to recently disclosed court documents.

The existence of these documents surfaced only in recent days as a result of a Freedom of Information Act lawsuit filed by a privacy group called the Electronic Frontier Foundation. The foundation (alerted to the issue in part by a NEWSWEEK story last fall) is seeking information about communications among administration officials, Congress and a battery of politically well-connected lawyers and lobbyists hired by such [big telecom carriers](#) as AT&T and Verizon. Court papers recently filed by government lawyers in the case confirm for the first time that since last fall unnamed representatives of the telecoms [phoned and e-mailed](#) administration officials to talk about ways to block more than 40 civil suits accusing the companies of privacy violations because of their participation in a secret post-9/11 surveillance program ordered by the White House.

At the time, the White House was proposing a surveillance bill—strongly backed by the telecoms—that included a sweeping provision that would grant them retroactive immunity from any lawsuits accusing the companies of wrongdoing related to the surveillance program.

Although a version of this proposal has passed the Senate, it has so far been blocked in the House by Democrats who are demanding greater public disclosure about the scope of the administration's post-9/11 surveillance of individuals inside the United States. Negotiations between House Democrats, the Senate and administration representatives over a possible compromise have made little progress so far. Capitol Hill officials now say Congress may not get around to final action on new surveillance legislation until right before a one-year temporary law expires in August—right before the presidential nominating conventions.

The recent responses in the Electronic Frontier Foundation lawsuit provide no new information about the administration's controversial post-9/11 electronic surveillance program itself, but they do shed some light on the degree of anxiety within the telecom industry over the litigation generated by the carriers' participation in the secret spying. One court declaration, for example, confirms the existence of notes showing that a telecom representative called an Office of Director of National Intelligence (ODNI) lawyer last fall to talk about "various options" to block the lawsuits, including "such options as court orders and legislation." Another declaration refers to a letter and "four fax cover sheets" exchanged between the telecoms and ODNI over the surveillance matter. Yet another discloses e-mails in which lawyers for the telecoms and the Justice Department "seek or discuss recommendations on legislative strategy."

The declarations were filed in court by government lawyers only after U.S. Judge Jeffrey White in San Francisco, who is overseeing the case, ordered them to fully process the Electronic Frontier Foundation's FOIA request for documents showing lobbying contacts by the telecoms. The government initially resisted even responding to the FOIA request, but White found that disclosure was in the public interest because it "may enable the public to participate meaningfully in the debate over" the pending surveillance legislation.

But while complying with the judge's order to confirm the existence of some documents, administration officials have told the judge they cannot actually disclose the documents

themselves, in part because to do so would undermine national security. Even to confirm the identity of any of the carriers with whom administration officials have discussed the surveillance issue would implicitly identify the carriers that participated in the program and therefore "would provide our adversaries with a road map" that would help them thwart surveillance against them, according to a court declaration filed by Lt. Gen. Ronald L. Burgess, director of the ODNI's intelligence staff.

Spokesmen for the Justice Department and ODNI today declined comment to NEWSWEEK on the grounds that neither agency will talk about pending litigation.

The revelation of the existence of the documents comes at a time when Congress is bracing for what is expected to be a grueling summerlong debate over the surveillance measure. Administration officials say that unless Congress acts by this summer, existing court orders permitting surveillance of suspected overseas terrorists will expire, threatening the U.S. government's ability to keep track of potential plots against the homeland. If new legislation is not enacted before the current stop-gap law expires, Republicans may try to use this as an election issue against Democrats.

The debate over a new surveillance authorization is likely to be complicated by figures showing sharp increases in the government's electronic eavesdropping on U.S. citizens. One report filed with the office of the administrator of the U.S. Courts shows that standard wiretaps approved by federal and state courts jumped 20 percent last year, from 1,839 in 2006 to 2,208 in 2007. Later this week another report is expected to also show increases in secret wiretaps and break-ins approved by the Foreign Intelligence Surveillance Court (FISC) in terror and espionage cases. But even these secret wiretaps and break-ins—estimated to be about 2,300—tell only part of the story. They don't include other secret methods the government uses to collect personal information on U.S. citizens.

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