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# Bush Administration Pushes Immunity for Telecommunications Companies Under Wiretapping Program

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WASHINGTON – The Bush administration wants the power to grant legal immunity to telecommunications companies that are slapped with privacy suits for cooperating with the White House's controversial warrantless eavesdropping program.

The authority would effectively shut down dozens of lawsuits filed against telecommunications companies accused of helping set up the program.

The vaguely worded proposal would shield any person who allegedly provided information, infrastructure or "any other form of assistance" to the intelligence agencies after the Sept. 11, 2001 terror attacks. It covers any classified communications activity intended to protect the country from terrorism.

Republicans say immunity is necessary to protect the companies that responded to legal presidential orders to thwart terrorists in the years after 9/11. Yet some Democrats fear the administration's proposal would do much more than advertised, potentially protecting anyone who gave broad categories of aid to the government as part of a spy program that monitors communications.

Because the administration does not want to identify which companies participated in the operations, it is asking Congress to let the attorney general intervene on behalf of any person or company accused of participating in the surveillance work, whether or not they actually did, two senior Justice Department officials said.

More than a dozen government officials interviewed for this story spoke on condition they not be identified because sensitive negotiations with Congress are ongoing.

One of the officials said the defendants in suits brought by the American Civil Liberties Union — Verizon and AT&T — would be the key beneficiaries of the proposed legislation. Both companies are a central part of the U.S. communications grid, running networks that transmit both telephone calls and e-mails.

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There is a divide among Congress' majority Democrats about whether the companies deserve any protection. Some believe they were operating in good faith, on orders that appeared to be lawful. Others believe lawyers at the companies had a responsibility to ensure the requests were not an abuse of presidential power.

National Intelligence Director Mike McConnell considers the issue a key element of any legislation that Congress considers this fall to update the Foreign Intelligence Surveillance Act, known as FISA.

Trying to make his point, McConnell recently confirmed that the private sector assisted with the surveillance work — and faces lawsuits. "If you play out the suits at the value they're claimed, it would bankrupt these companies," McConnell told the El Paso (Texas) Times in an interview posted online last week.

The companies could face civil penalties of at least \$1,000 per customer, for a total that would reach well into the billions.

Democrats say McConnell's first draft of the immunity proposal is far too murky. Sen. Ron Wyden, a Democratic intelligence committee member, fears the language would go far beyond protecting private companies and their employees, also giving cover to any government officials who may have broken the law.

"I and others are going to make sure that anything that is done is done in a narrow, targeted way," Wyden said.

Sen. Kit Bond, the intelligence committee's top Republican, said, "The only question here is whether we should provide full liability protection to those companies that are alleged to have assisted the government in protecting the United States. The answer is a resounding 'yes.'"

In the weeks after 9/11, the White House launched a new surveillance program that allowed the National Security Agency to monitor communications between people in the United States and others overseas when terrorism was suspected. With legal directives in hand, the government asked a narrow group of telecommunications carriers to participate in a program.

Conventional wisdom has long been that the bulk of the surveillance operations — groundbreaking because they lacked judicial oversight — involved primarily telephone calls. However, officials say the Bush administration's program frequently went after e-mail and other Internet traffic, which Al Qaeda has embraced as a key means of communication.

After the highly classified operations became public in 2005, a wave of lawsuits was filed, including cases against AT&T and Verizon, two telecommunications providers alleged to have participated. The legal battles gave the telecommunications industry pause, government officials said.

David S. Kris, former associate deputy attorney general for national security issues, said the debate over immunity raises a broad policy question: "To what extent is the private sector supposed to be a check on government power?"

Answering that question is difficult, he said, because lawmakers and the public do not know exactly how the government crafted its request for cooperation. "If the attorney general says, 'Your country needs you to do this to save lives,' that may generate some sympathy for a company that cooperates," Kris said.

How the government conducts surveillance during national security investigations is expected to be a leading issue when the Democratic-controlled Congress returns next week and contemplates changes to FISA.

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