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BY OVERNIGHT MAIL

Thomas F. Ahern, Administrator
Division of Public Utilities and Carriers
89 Jefferson Boulevard
Warwick, RI 02888

Re: Complaint and request for investigation of Verizon and AT&T

Dear Mr. Ahern:

Pursuant to your letter to Mr. William [Leahy], dated May 25, 2006, this letter is to respond on behalf of AT&T to the informal complaint of the Rhode Island Affiliate, American Civil Liberties Union ("RI-ACLU") filed on May 24, 2006 ("Complaint") with the Rhode Island Division of Public Utilities and Carriers ("Division"). The Complaint makes certain allegations regarding Verizon and AT&T's putative sharing of telephone records with the National Security Agency ("NSA") and asks the Division to investigate and, if appropriate, take remedial action. As described in more detail below, the Division's examination of these issues is neither appropriate nor even possible in light of the national security concerns that have already been raised by the United States and, as the Federal Communications Commission ("FCC") has already indicated, in view of the federal government's state secrets privilege. For this reason and for all the reasons set forth below, we urge the Division to decline to initiate any proceedings relating to alleged NSA surveillance activities.

The litigation against AT&T and other carriers arises primarily from press reports concerning certain alleged activities of the NSA. On December 19, 2005, in response to a report in the New York Times, President Bush acknowledged the existence of a counterterrorism program involving the interception of international telephone calls made or received by suspected al Qaeda agents.¹ The United States Department of Justice subsequently published a

¹ See Press Conference of President Bush (Dec. 19, 2005), available at <http://www.whitehouse.gov/news/releases/2005/12/20051219-2.html>; Press Conference of Attorney General Alberto Gonzales and General Michael Hayden, Principal Deputy Director for

written explanation of the legal authority for the program acknowledged by the President and defended by the Attorney General.² On May 11, 2006, USA Today published a story suggesting that the NSA's intelligence activities may also have included some form of access to domestic call records databases.³ The Administration has neither confirmed nor denied these more recent reports.

AT&T has consistently declined either to confirm or deny any participation in these programs. As a matter of policy, AT&T declines comment on matters related to national security. AT&T has, however, affirmed that any cooperation it affords the law enforcement or intelligence communities occurs strictly in accordance with law.

On January 31, 2006, following publication of the original New York Times story, a nationwide class action lawsuit was filed against the AT&T Defendants in the United States District Court for the Northern District of California. *See Hepting v. AT&T*, No. C-06-0672-VRW (N.D. Cal.). That lawsuit alleges that one or more of the AT&T Defendants cooperated with various NSA national security surveillance activities and, in so doing, violated the First and Fourth Amendments of the U.S. Constitution and various provisions of the Foreign Intelligence Surveillance Act ("FISA"), the Electronic Communications Privacy Act ("ECPA"), the Communications Act of 1934, and California state law. Following publication of the USA Today story on May 11, a series of additional class actions were filed, in both state and federal courts, making similar allegations. To date, more than twenty such actions have been filed against the AT&T Defendants and other carriers in courts around the country. On May 24, 2006, a petition was filed with the Judicial Panel on Multidistrict Litigation seeking to consolidate these actions before a single federal district court for pretrial proceedings.⁴ Among other reasons, the MDL petition cites the unique national security concerns involved in these cases and the possible need to share highly classified information with federal judges as justifications for consolidating all of the pending actions in a single federal judicial district for joint consideration.

To date, the only lawsuit that has proceeded past the filing of the complaint is the original *Hepting* matter in the Northern District of California. In *Hepting*, the AT&T Defendants responded by filing a motion to dismiss the suit, on various grounds including that the maintenance of any claim or cause of action is prohibited by a number of well-established

National Intelligence (Dec. 19, 2005), available at <http://www.whitehouse.gov/news/releases/2005/12/20051219-1.html>.

² See United States Department of Justice Memorandum, *Legal Authorities Supporting the Activities of the National Security Agency Described by the President*, (January 19, 2006) (Attachment A).

³ Leslie Cauley, *NSA Has Massive Database of Americans' Phone Calls*, USA Today, May 11, 2006, at A1.

⁴ See Defendants Verizon Communications Inc., Verizon Global Networks Inc., and Verizon Northwest Inc.'s Motion for Transfer and Coordination Pursuant to 28 U.S.C. § 1407, *In re National Security Agency Litigation*, Judicial Panel on Multidistrict Litigation (May 24, 2006) (Attachment B).

