

May 24, 2006

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:

I am writing on behalf of the Rhode Island Affiliate, American Civil Liberties Union ("RI ACLU") and its 2,700 members to complain that Verizon and AT&T have improperly shared telephone records with the National Security Agency ("NSA").<sup>1</sup> We request that the Division, as the state body charged with safeguarding consumers from wrongdoing by utilities, investigate this very serious invasion of privacy.<sup>2</sup>

A May 11th article in *USA Today* reported that three phone companies, AT&T, Verizon and BellSouth, have provided the NSA with the personal calling details of customers, including telephone numbers called, time, date, and direction of calls. Leslie Cauley, "NSA Has Massive Database of Americans' Phone Calls," *USA Today*, May 11, 2006. See also John Markoff, "Questions Raised for Phone Giants in Spy Data Furor," *New York Times*, May 13, 2006. The phone companies' apparent action in releasing this private information amounts to a systematic and flagrant violation of their customers' privacy rights. It is important to emphasize that this information can potentially reveal the associations, interests and many other personal details about customers' lives.

*USA Today* described the information that these companies made available to the government as relating to billions of telephone calls made by millions of residential phone customers. According to sources in the story, the companies provided this information without the consent of their customers and without the compulsion of a warrant, court order, or other legal process from the government. The information provided to the NSA about

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<sup>1</sup> Under the Division's rules, this is being filed as an informal complaint, without prejudice to the potential future filing of a formal complaint. We further note that the Division has the authority to summarily investigate any "unreasonable" practices or acts of public utilities and to initiate formal proceedings on its own. R.I.G.L. §39-4-13.

<sup>2</sup> Specific named complainants include the following members of the RI ACLU Board of Directors who are customers of one or both of these companies: Judith Anderson, a local and long distance customer of Verizon; Jennifer Azevedo, a local customer of Verizon; Karen Davidson, a local and long distance customer of AT&T; Steven DeToy, a local customer of Verizon; Elizabeth Morancy, a local customer of Verizon; Anne Mulready, a local customer of Verizon and long distance customer of AT&T; Erich Stephens, a local and long distance customer of Verizon; and Vivian Weisman, a local and long distance customer of Verizon.

these telecommunication customers, it should be noted, can be easily matched with other databases to obtain the name and residence of each caller. This information would enable the government to track virtually every phone call made by Rhode Island residential customers, including the identity of the people they have called and the length of each conversation.

In addition to being handed over without any compulsory legal process, the sharing of this phone record information appears to violate AT&T and Verizon's own customer privacy agreements. The AT&T policy states that it does not sell the personal information of its customers, and that it provides information in response to "court orders or subpoenas" and "abides by the federal and/or state CPNI rules that apply to all telecommunication carriers."<sup>3</sup>

Verizon has a similar policy restricting the disclosure of information. This policy appears on the company's web site and is further documented in detail in the "Customer Info Guide" found in the May 2006 edition of the Verizon White Pages for Providence. The policy specifies that non-consensual disclosure of information is made only where "required by law" and when "necessary to comply with court orders and subpoenas." Indeed, the customer guide emphasizes again and again Verizon's pledge to protect its customers' information from non-consenting disclosure. In light of the recent allegations, however, the guide's concluding affirmation, in bold print, that "Verizon is committed to maintaining high standards for the protection of customer privacy," carries a great deal of irony. Customer Info Guide, page 6.

Initially, AT&T and Verizon did not deny that they provided private customer information to the NSA as described in the *USA Today* report. Verizon has since issued ambiguous statements about its and its subsidiaries' participation, but AT&T has yet to make a claim that they are not cooperating with the NSA. The continued uncertainty regarding exactly what data disclosure has occurred underscores the need for an independent entity like the DPUC to conduct a review of these allegations and determine their validity.

Ultimately, these allegations are too serious and too well-founded to be dismissed without a thorough investigation. In addition to the *USA Today* story, the *New York Times* has run a series of stories describing a broader program of wiretapping by the NSA that alleges cooperation by "the leading companies" in the telecommunications industry. Eric Lichtblau and James Risen, "Spy Agency Mined Vast Data Trove, Officials Report," *New York Times*, December 24, 2005. Further it has been widely reported that a former AT&T employee has come forward as part of a lawsuit filed by the Electronic Frontier Foundation stating that he witnessed the installation of special information-gathering equipment by the NSA in AT&T's switching network.

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<sup>3</sup> As you know, CPNI is information the phone company obtains when it provides phone service, including the types of services purchased by the customer, how they are used, and the related billing of those services. Examples of CPNI include number and type of lines, current charges, long distance billing record, local services (for example, subscriptions to custom calling services), directory assistance charges and bill summary (when and whom the customer calls).

In short, we have a well-founded belief that these telecommunications companies have violated their customers' privacy as well as their own customer service agreements. Among other possible violations of law, we believe that these actions constitute an "unreasonable" practice or act by a public utility as prohibited by R.I.G.L. §39-4-3, and subject to the Division's jurisdiction and investigative authority. The companies' violations of their privacy policies also amount to the type of deceptive advertising practices prohibited by R.I.G.L. §11-18-10. Further, the disclosure of personal telephone record information would appear to violate the carefully crafted standards contained in a variety of state laws that have been enacted to limit the disclosure of telephone information. See, e.g., R.I.G.L. §39-2-20 (establishing a process for disclosure of certain non-published telephone directory information to law enforcement agencies); R.I.G.L. §12-5.2-3 (establishing detailed procedures for application of court orders for use of pen registers or trap and trace devices); and R.I.G.L. §39-1-62 (strictly limiting the disclosure of E-911 information).

We note that other public utilities commissions in New England have already begun investigating these matters. In response to a complaint filed with the Maine Public Utilities Commission about these allegations, that Commission issued a procedural order on May 15, 2006 requesting Verizon to address the allegations contained in that complaint and the *USA Today* article. And on May 12, 2006, the Commissioner of Vermont's Department of Public Service issued a statement indicating that he had been ordered by the Governor "to determine if any of Verizon's actions have violated ... Vermont law in the release of customer telephone records..."

For all these reasons, we respectfully request that the Division investigate this complaint and the allegations of improper phone record sharing, and determine whether AT&T and/or Verizon have violated any rules of the Division or Rhode Island law in this regard. If either of these companies are found to have committed any violations, we further request that the Division take all appropriate action within its jurisdiction to ensure that such violations cease.

Thank you in advance for your attention to this complaint.

Sincerely,

Steven Brown  
Executive Director