

JURISDICTION

The Department of Telecommunications and Energy of the Commonwealth of Massachusetts (“DTE”) has jurisdiction to hear complaints regarding telephone service providers. The DTE has general supervision and regulation of, and jurisdiction and control over the “transmission of intelligence within the Commonwealth by electricity, by means of telephone lines or telegraph lines or any other method or system of communication, including the operation of all conveniences, appliances, instrumentalities, or equipment appertaining thereto, or utilized in connection therewith.” G.L. c. 159, § 12 (d). Upon a written complaint from a mayor of the Commonwealth relative to the service or charges for service of any company engaged in the transmission of intelligence by electricity, the DTE must grant a public hearing, first giving the complainants and defendants reasonable notice. G.L. c. 159, § 24.

PARTIES

1. David B. Cohen is the Mayor of Newton and has offices at Newton City Hall, 1000 Commonwealth Avenue, Newton Centre, MA 02459.

2. Joseph A. Curtatone is the Mayor of Somerville and has offices at Somerville City Hall, 93 Highland Avenue, Somerville, MA 02143.

3. Mary Clare Higgins is the Mayor of Northampton and has offices at Northampton City Hall, 210 Main Street, Northampton, MA 01060.

4. Michael D. Bissonnette is the Mayor of Chicopee and has offices at Chicopee City Hall, 17 Springfield Street, Chicopee, MA 01013.

5. AT&T Corp., identification number 134924710, is a corporation currently doing business in the Commonwealth of Massachusetts as a provider of telecommunications services. AT&T is incorporated in the state of New York. Its principal office is located at 32 Avenue of the Americas, New York, NY 10013.

6. Verizon Communications, Inc., identification number 411956621, is a corporation currently doing business in the Commonwealth of Massachusetts as a provider of telecommunications services. Verizon is incorporated in the state of Delaware. Its principal office is located at 7900 Xexes Avenue, So., Ste 1700, Minneapolis, MN, 55431.

FACTS

Upon information and belief, complainants allege that:

7. On May 11, 2006, USA Today newspaper published an article about a previously undisclosed database of telephone calls held by the National Security Agency. *See* Leslie Cauley, *NSA Has Massive Database of Americans' Phone Calls*, USA TODAY May 11, 2006.

8. The database includes records of all telephone calls made from shortly after September 11, 2001 to the present by residential and mobile phone customers of AT&T (and the former SBC), Verizon, and Bell South. The database includes billions of phone records from over 200 million customers. *Id.*

9. The database includes dozens of fields of information including numbers called; time, date, and direction of calls; and other details. Using this information, the NSA can easily determine the names and addresses associated with these calls by cross-referencing other, readily available databases. *See Id.*; John Markoff, *Questions Raised for Phone Giants in Spy Data*

Furor, N.Y. TIMES, May 13, 2006; John O’Neil and Eric Lichtblau, *Qwest’s Refusal of N.S.A. Query is Explained*, N.Y. TIMES, May 12, 2006.

10. According to one source quoted in the USA Today article, the database is the “largest ... ever assembled in the world.” The NSA’s goal is “to create a database of every call ever made.” *See* Cauley, May 11, 2006.

11. The database is accessible not just by the NSA, but also by the Central Intelligence Agency, the Federal Bureau of Investigation, and the Drug Enforcement Agency. *Id.*

12. AT&T and Verizon made these telephone records available to the NSA on a purely voluntary basis. They were not provided under the compulsion of any legal process such as a warrant, court order, or subpoena. *Id.*; Markoff, May 13, 2006; O’Neil and Lichtblau, May 12, 2006.

13. In discussions with the telephone companies, NSA “made it clear it was willing to pay for cooperation” by the telephone companies. The companies are still working “under contract” with the NSA. *Id.*

14. AT&T and Verizon did not obtain their customers’ permission to provide their call histories to the NSA. Customers did not provide permission to AT&T or Verizon with permission to provide their call histories to the NSA.

15. In fact, AT&T and Verizon both have privacy policies that prohibit the disclosure of private call information, termed customer proprietary network information (“CPNI”), to outside parties without legal process.

16. The AT&T policy states that it does not sell the personal information of its customers and “abides by the federal and/or state CPNI rules that apply to all telecommunication carriers.” See AT&T Privacy Policy, available at <http://att.sbc.com/gen/privacy-policy?pid=2506>.

17. AT&T defines CPNI to include information such as “long distance and local service billing records” and “usage data and calling patterns.” *Id.*

18. AT&T states that it provides information in response to “court orders or subpoenas.” *Id.*

19. Verizon has a similar policy restricting the disclosure of information and provides that information may be disclosed “if disclosure is required by law...Verizon must disclose information, as necessary, to comply with court orders or subpoenas.” See Verizon Privacy Policy, available at <http://www22.verizon.com/about/privacy/customer/>.

20. On December 16, 2005, the New York Times reported on an NSA program of eavesdropping on the telephone conversations of Americans without the court order required by the Foreign Intelligence Surveillance Act. James Risén and Erich Lichtblau, *Bush Lets U.S. Spy on Callers Without Courts*, N.Y. TIMES, Dec. 16, 2005.

21. Following these initial revelations, many Massachusetts residential telephone customers, including customers of defendants AT&T and Verizon, contacted their telecommunications provider in writing, telling their telephone companies not to release information to the NSA without a warrant and asking the telephone companies to inform them whether they were cooperating with the NSA.

22. Massachusetts residential telephone customers, including customers of defendants AT&T and Verizon, were not notified by their telephone companies that their personal call

information was being made available to the NSA or any other government agency.

23. When approached by the NSA, Joseph P. Nacchi, former Chief Executive Officer of Qwest, another telephone company, was unwilling to provide private customer information without a warrant or other legal process. According to a statement released on May 12 by Herbert J. Stern, Mr. Nacchio's attorney, "Mr. Nacchio made inquiry as to whether a warrant or other legal process had been secured in support of that request. When he learned that no such authority had been granted, and that there was a disinclination on the part of the authorities to use any legal process," he concluded that the request violated federal privacy provisions "and issued instructions to refuse to comply (with the NSA request)." *See* Markoff, May 13, 2006.

24. The NSA pressured Qwest to provide the records through a variety of means including accusing Qwest of being the "lone holdout" of the major telephone companies and hinting that failure to provide the records could jeopardize Qwest's ability to obtain future contracts for classified government work. *See* Cauley, May 11, 2006.

25. When Qwest lawyers asked the NSA to obtain a warrant from the Foreign Intelligence Surveillance Act (FISA) Court, NSA officials "told (Qwest) they didn't want to do that because FISA might not agree with them." *Id.* The NSA also rejected a request that it obtain a letter from the Attorney General authorizing the database program. *Id.*

26. Verizon has denied that it provided "customer phone records" or "call data" to the NSA but has not defined what these terms encompass. News Release, *Verizon Issues Statement on NSA Media Coverage*, May 16, 2006, available at <http://newscenter.verizon.com/proactive/newsroom/release.vtml?id=93450>.

27. AT&T has not denied that it provided private customer information to the NSA as described in the USA Today report. See O’Neil and Lichtblau, May 12, 2006.

28. Since the USA Today story was released, neither the NSA nor the Bush Administration has denied the existence of the database. *Is the Phone Company Violating Your Privacy?*, WALL STREET JOURNAL ONLINE, May 13, 2006, available at http://online.wsj.com/public/article/SB114747897946851946-tb_v_4Qj92Ygiv98Bu_rg2JzeFA_20070513.html?mod=blogs.

VIOLATIONS OF LAW

Violation of the Massachusetts Right of Privacy Statute

29. AT&T and Verizon have violated and continue to violate the Massachusetts Right of Privacy Statute, G.L. c. 214, § 1B, by making available to the NSA information relating to its customers’ telephone calls, including the numbers called, time, date, and direction of calls, without lawful authority and without the consent or knowledge of the customers.

30. The Massachusetts Right of Privacy Statute states, in relevant part, that a person “shall have a right against unreasonable, substantial or serious interference with his privacy.” G.L. c. 214, § 1B.

31. Providing information on individual telephone calls to an agency of the federal government without lawful authority and without notice to the consumer is an unreasonable, substantial and serious interference with the privacy of the customers on either end of the phone

call. With the information provided by the telephone companies, the NSA and other government agencies can determine the identity of the callers.

Violation of the Massachusetts Consumer Protection Act

32. General Laws, c. 93A, §2 prohibits “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.”

33. AT&T and Verizon have engaged in unfair and deceptive business practices in violation of G..L. c. 93A by posting on their web sites privacy policies that led customers to believe that the intimate information relating to their telephone calls would not be voluntarily given to a third party without the consent or approval of the customer and by then clearly violating those policies.

34. Defendant AT&T has posted a privacy policy on its website, at <http://att.sbc.com/gen/privacy-policy?pid=2506> and <http://att.sbc.com/gen/privacy-policy?pid=2566>. The AT&T policy states that it does not sell the personal information of its customers, that it provides information in response to “court orders or subpoenas,” and that it “abides by the federal and/or state CPNI rules that apply to all telecommunication carriers.”

35. The AT&T privacy policy was and continues to be an untrue and misleading statement, which AT&T, with reasonable care should have known to be an untrue or misleading statement, in that AT&T has disclosed private customer information to the NSA knowing that such disclosure was contrary to the representations made in its privacy policy.

36. Verizon has posted a privacy policy on its website, <http://www22.verizon.com/about/privacy/customer/>. The Verizon policy provides that

information may be disclosed when “it is required by law and when we believe that disclosure is necessary to protect our rights and/or comply with a judicial proceeding, court order or legal process.”

37. The Verizon privacy policy was and continues to be an untrue and misleading statement, which Verizon, with reasonable care should have known to be an untrue or misleading statement, in that Verizon has disclosed private customer information to the NSA knowing that such disclosure was contrary to the representations made in its privacy policy.

38. AT&T and Verizon both disseminated privacy policies to Massachusetts consumers via the Internet.

39. A reasonable Massachusetts consumer could believe, by reading the privacy policies of the telephone companies, that the information relating to their telephone calls would not be given voluntarily to a government agency without a court order or other legal process. As alleged above, both Verizon and AT&T volunteered the information in question to the NSA without being compelled by any judicial process.

40. By violating their own clearly posted policies regarding privacy, Defendants AT&T and Verizon conducted business with their customers in an unfair and deceptive manner. Customers were misled into thinking their information was private and would not be disseminated freely.

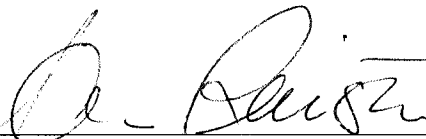
41. Since the public learned that the telephone companies were providing information to the NSA, many Massachusetts consumers have contacted them to express their dissatisfaction.

The telephone companies have made no efforts to change their conduct and have not offered consumers any redress.

RELIEF SOUGHT

Complainants respectfully request that DTE hold a public hearing to determine the responsibility of AT&T and VERIZON for the violations of law set forth herein and that, following the hearing, DTE order the telephone companies to (a) cease and desist from providing to any government agency records of customers' telephone calls or other personal information, unless compelled to do so by law or court order; and (b) provide prompt notice to customers whenever their records are disclosed to a government agency.

DAVID B. COHEN, Mayor of Newton,
JOSEPH A. CURTATONE, Mayor of Somerville
MARY CLARE HIGGINS, Mayor of Northampton
MICHAEL D. BISSONNETTE, Mayor of Chicopee,
By their attorney,



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