Senate OK's immunity on wiretaps
Backs telecoms' role in surveillance efforts

WASHINGTON - The US Senate yesterday voted to shut down a series of high-profile lawsuits against telecommunications companies that facilitated President Bush's warrantless surveillance program, taking a major step toward closing the last forum in which critics have challenged the operation's legality.

In a victory for the White House, the Senate voted to grant retroactive immunity from lawsuits to telecom companies - including industry giants AT&T, Verizon, and Sprint - that have been sued by customers for allegedly allowing the government to eavesdrop on private calls and e-mails despite communications privacy laws.

After the 2001 terrorist attacks, Bush authorized the military to monitor Americans' international communications, asserting that his wartime powers trumped a law requiring court warrants. The program required the telecoms, which are required by several other laws to protect their customers' privacy unless the government has a lawful wiretap order, to provide access to their networks.

Since The New York Times disclosed the warrantless surveillance program in December 2005, about 40 lawsuits have been filed against telecoms alleging that they illegally cooperated with the program. But in yesterday's 67-31 vote, every Republican senator present, along with 19 Democrats and independent Joe Lieberman of Connecticut, voted to terminate the lawsuits.

Among the presidential candidates in the Senate, likely Republican nominee John McCain, Republican of Arizona, voted to grant immunity to the telecoms and Democrat Barack Obama voted against granting immunity. Hillary Clinton had opposed granting immunity, but she was out of town campaigning and was not present for the vote.

The Bush administration, which has demanded that Congress pass a law immunizing the telecommunications industry, praised the Senate yesterday. The administration has argued that its eavesdropping program was lawful and that the telecoms should not be punished for helping the government during a time of national crisis.

"The telephone companies that were alleged to have helped their country after 9/11 did so because they are patriotic, and they certainly helped us and they helped us save lives," White House spokeswoman Dana Perino said.

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But privacy advocates and critics of the administration's expansive theories of presidential power said they were disappointed with the vote. Such critics have pushed the lawsuits against the telecoms in hope of winning a definitive ruling that the program was illegal, thereby keeping it from becoming a precedent for the future.

"When an over-reaching executive wants to conduct illegal spying in secret, those companies are the only ones in a position to say 'no' and ensure that the law is followed," said Kevin Bankston, a senior staff attorney with the Electronic Freedom Foundation. The group has sued AT&T on behalf of a group of its customers and is consulting on related lawsuits.

"Therefore," Bankston added, "it's critical that when they fail to follow the law, they need to be held accountable - to ensure that next time the government attempts to engage in illegal spying, those companies will say 'come back with a warrant.'"

Although news of the program initially prompted a bipartisan uproar, congressional attempts to investigate it largely petered out. Then, in August 2007, with little prior debate, Congress hastily enacted the Protect America Act, which essentially legalized a form of the warrantless surveillance.

The act gave the executive branch the power to eavesdrop on electronic communications without warrants whenever officials certify to themselves that a target of their surveillance is probably located abroad - even if an American is on the other end of the line. It also required telecoms to provide access to their networks for the program, and granted them immunity from any future lawsuits for complying.

The act will expire on Feb. 15, and Congress has a scheduled recess next week. Lawmakers are now rushing to pass new legislation before leaving town on their vacations that would extend the Protect America Act for several more years.

The provision that would retroactively protect the telecoms from civil lawsuits is an amendment to the Senate's version of the surveillance bill. The House has already passed a similar bill, but its version does not include the immunity amendment.

House and Senate leaders will now negotiate over whether the final bill should include the immunity provision. Adding to the pressure, the telecommunications industry - a major campaign donor to both parties - is lobbying heavily for the provision, and Bush has vowed to veto any surveillance bill that does not include it.

A similar scenario played out six months ago, when Congress passed the original Protect America Act on the eve of its August recess. With time running out before lawmakers were planning to leave town, the House shelved its less sweeping version of the bill and accepted the White House's preferred version, which granted the president broader powers than Democratic leaders had initially wanted to accept, but which had already passed the Senate.

The Senate yesterday voted specifically on an amendment offered by Senator Christopher Dodd, Democrat of Connecticut, that would have stripped the immunity provision in order to allow the lawsuits against the telecommunications companies to continue. But Dodd's amendment was soundly defeated, and the Senate went on to approve the entire bill by an overwhelming vote.
One of the major champions of the bill, Senator Kit Bond, Republican of Missouri and the vice chairman of the Senate Intelligence Committee, hailed the vote as a bipartisan victory in the war on terrorism. "Today, Republicans and Democrats in the Senate proved to American families that we can protect our civil liberties and keep our country safe from attack," he said in a prepared statement.

But Caroline Fredrickson, Washington director of the American Civil Liberties Union, said the legislation would "set a terrible precedent for the future" by showing that the government will give "special protections to companies that break the law" to help a president bypass legal restrictions on his power.

"The Democrats are helping President Bush close the door on a real inquiry into the illegal wiretapping program and are ensuring that there is not going to be any accountability going forward," she said. "It's a huge setback for those who think the president should be subject to the rule of law."

Earlier, Senator Dianne Feinstein, Democrat of California, proposed an amendment that would have reiterated that the statutes Congress has enacted to govern electronic surveillance on US soil are the exclusive means by which it may be collected lawfully. But Feinstein's proposal fell short of the 60-vote majority it needed to be added to the bill.

"This was not a good day for communications privacy law," said Marc Rotenberg, president of the Electronic Privacy Information Center, a nonprofit think tank.

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