To the Editor:

Re “Uncle Sam on the Line” (Op-Ed, Nov. 5): Former Attorney General John Ashcroft leaves out a crucial point when he argues that telecommunications companies that allegedly cooperated with the administration’s warrantless wiretapping program should be shielded from lawsuits.

Telecom companies that cooperate with a government wiretap request are already immune from lawsuits, as long as they get a court order or a certification from the attorney general that the wiretap follows all applicable statutes.

This immunity provision in current law protects companies that respond to legitimate government requests for assistance. It also protects innocent Americans who expect that their communications will remain private unless the government and the companies are acting lawfully.

If companies that allegedly cooperated with the warrantless wiretapping program didn’t follow the law during the five years that the program was in existence, they should be held accountable. And courts should be allowed to rule on the legality of this program.

If we want companies and the government to follow the law in the future, retroactive immunity sets a terrible precedent.

Russ Feingold
U.S. Senator from Wisconsin
Washington, Nov. 6, 2007

To the Editor:

John Ashcroft’s argument that telecommunications companies ought not be held liable for doing whatever the president asks them to do assumes that the government knows best and that we should trust the government. It doesn’t, and we shouldn’t.

President Bush and his administration have relentlessly broken the law, trampled the Constitution and subverted the Justice Department over a period of seven years. Why should anyone trust them, especially in matters of interpreting law? Fear of prosecution
will be a better guardian of our rights than The Decider and all his men.

If companies can be held liable, Mr. Ashcroft says, then the “only rational response would be for companies to adopt an attitude of extreme wariness, even in the most urgent or clear-cut situations.” Exactly. As well they should.

Barry Brissman
Wausau, Wis., Nov. 5, 2007

To the Editor:

John Ashcroft labors mightily to obscure what is clear. The FISA statute requires a search warrant for a domestic wiretap. The phone company employees who were asked to participate in tapping lines without warrants were asked to break the law. Their responsibility was to respect the law, and to notify authorities that there was criminal activity afoot.

His assertion that “a corporation will typically not know enough about the underlying circumstances and operations to make informed judgments about legality” is incompatible with democracy. The statute is known, and both citizens and corporations are bound by it. The alternative — in which an act is legal or illegal at the mere assertion of the executive — is tyranny.

Barry Levine
Lafayette, Calif., Nov. 5, 2007

To the Editor:

John Ashcroft’s plea for immunity for telecom companies that violated their subscribers’ privacy ignores two pertinent facts:

¶His argument that telecom companies have neither the expertise nor the facts to determine the legality of such a program ignores the fact that, like most corporations, most telecom companies have sophisticated legal departments that advise on many things, including whether court orders are required for disclosing subscribers’ personal information.

¶The government’s need for such information could have been fulfilled under the then-existing FISA rules.

Mr. Ashcroft’s insistence that telecom companies are entitled to rely upon assurances that government requests are de facto legal is a little too close to Richard M. Nixon’s famous pronouncement that if the president does something, it’s legal.

Diana Slivinska
Pittsburgh, Nov. 5, 2007

To the Editor:

According to the testimony before Congress of Acting Attorney General James B. Comey, Alberto R. Gonzales, then the White House counsel, visited John Ashcroft in the hospital in March 2004 to secure the renewal of warrantless surveillance by means of phone
tapping. As Mr. Comey recounted, Mr. Ashcroft refused to accede to Mr. Gonzales’s plea.

Now that Mr. Ashcroft’s consulting firm represents telecommunications companies seeking immunity from prosecution for disclosures, he is their advocate. Flip-flopping is not just the province of presidential hopefuls.

Roger Brandwein
Scarsdale, N.Y., Nov. 5, 2007

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