Bush Wants Phone Firms Immune to Privacy Suits

By Ellen Nakashima
Washington Post Staff Writer
Friday, May 4, 2007; Page A14

The Bush administration is urging Congress to pass a law that would halt dozens of lawsuits charging phone companies with invading ordinary citizens' privacy through a post-Sept. 11 warrantless surveillance program.

The measure is part of a legislative package drafted by the Justice Department to relax provisions in the 1978 Foreign Intelligence Surveillance Act (FISA) that restrict the administration's ability to intercept electronic communications in the United States. If passed, the proposed changes would forestall efforts to compel disclosure of the program's details through Congress or the court system.

The proposal states that "no action shall lie . . . in any court, and no penalty . . . shall be imposed . . . against any person" for giving the government information, including customer records, in connection with alleged intelligence activity the attorney general certifies "is, was, would be or would have been" intended to protect the United States from terrorist attack. The measure, which has not yet been filed, is contained in a proposed amendment to the fiscal 2008 intelligence authorization bill.

The immunity measure has stoked controversy following public uproar over news reports of warrantless access to both telephone conversations and records as part of the administration's post-Sept. 11 counterterrorism policies. It is part of a larger debate about the administration's post-Sept. 11 records as part of the authorization bill.

PRIVACY

An entire industry has mushroomed during the past decade because of the ability of companies to gather and make sense of public records, criminal histories and other electronic details. What are they doing with it?

Bush Wants Phone Firms Immune to Privacy Suits

Identity Theft? Gonzales Might Know Something About That

'Gated Communities' for War-Revaged Baghdad

'Gated Communities' For the War-Revaged

FEMA's 'Unfortunate' Privacy Disaster

More News

PROTECTING YOUR IDENTITY

Thieves are no longer only after your wallet, jewels or other precious belongings. Instead, they want you. Learn how to protect yourself and what to do if you're a victim.

• Identity Theft Special Report
• Q&A Transcript

WHO'S BLOGGING?

Read what bloggers are saying about this article.
part of a larger debate about the proper balance between guarding national security and civil liberties and the extent to which private companies have acted as an arm of the federal government. In March, the Justice Department inspector general found that the FBI had secret contracts with three telephone companies to obtain Americans' phone records, claiming "exigent circumstances," when, in many instances, none existed.

Civil liberties advocates opposed the immunity measure. They said the government had yet to disclose to Congress the attorney general's legal opinion supporting the surveillance program and what role the phone companies played in it.

The government asserts that the blanket immunity is necessary to protect sensitive national security information. "If companies are alleged to have cooperated with the government to protect our nation against another attack, they should not be held liable for any assistance they are alleged to have provided," Justice Department spokesman Dean Boyd said.

The immunity would be limited to assistance from Sept. 11, 2001, to the date the measure becomes law.

Though laws exist that could immunize companies against civil and criminal liability in surveillance cases, invoking them would acknowledge that the firm cooperated with the government. Such knowledge could allow a terrorist to adjust tactics, the government argues.

Government lawyers crafted the immunity bill using terms deliberately vague in referring to activity that "would be or would have been" aimed at protecting the country from attack to avoid indicating whether a company cooperated.

But civil libertarians charged that blanket immunity would amount to a legislative pardon to telecommunications companies and others that have aided the government's warrantless surveillance, without explaining the pardon's basis.

"To let them off the hook now sets a dangerous precedent by encouraging them to continue to engage in illegal collaborations with the government in the future," said Kevin Bankston, staff attorney for the Electronic Frontier Foundation, which last year filed a class-action lawsuit against AT&T, charging that the company allowed the government to unlawfully monitor U.S. residents.

The measure would gut Congress's efforts to conduct inquiries into the administration's surveillance program because a subpoenaed company or government official could invoke immunity, said Tim Sparapani, legislative counsel for the American Civil Liberties Union, which has sued the government to force a halt to its wiretapping program.
"The end result is not only will the Bush administration continue to stonewall Congress in its request for information on warrantless wiretapping, but no one who participated will have any threat above their head," Sparapani said. "You could just face a congressional subpoena and say, 'I'm sorry, I'm immunized.' "

Ron Wyden (D-Ore.), a member of the Senate Select Committee on Intelligence, said to gain his support, the measure needs to state explicitly that a person who intentionally violates the law should not be granted immunity. "If somebody intentionally breaks the law . . . that's not something you should just ignore," he said.