Telecom Firms Helped With Government's Warrantless Wiretaps

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The Bush administration acknowledged for the first time that telecommunications companies assisted the government's warrantless surveillance program and were being sued as a result, an admission some legal experts say could complicate the government's bid to halt numerous lawsuits challenging the program's legality.

"[U]nder the president's program, the terrorist surveillance program, the private sector had assisted us," Director of National Intelligence Mike McConnell said in an interview with the El Paso Times published Wednesday.

His statement could help plaintiffs in dozens of lawsuits against the telecom companies, which allege that the companies participated in a wiretapping program that violated Americans' privacy rights, former Justice Department officials said.

Warrantless surveillance began shortly after the Sept. 11, 2001, terrorist attacks and was placed under supervision of a special court in January. An appeals court in San Francisco is weighing the government's argument that these cases should be thrown out on the grounds that the subject matter is a "state secret" and that its disclosure would jeopardize national security.

The government has repeatedly asserted that any relationship between the

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Mike McConnell's statements could help plaintiffs in lawsuits against telecommunications companies. (By Alex Wong -- Getty Images For Meet The Press)
Telecom firms and the National Security Agency's spy program is classified. The firms' alleged cooperation and other details of the program, government lawyers have argued, are so sensitive that they cannot be disclosed. The government has argued the lawsuits against the telecom firms must be dismissed.

"Disclosure of the information covered by this [state secrets] privilege assertion reasonably could be expected to cause exceptionally grave damage to the national security of the United States," McConnell said in a sworn affidavit filed in a federal court in San Francisco in May.

David Kris, a former Justice Department official in Republican and Democratic administrations, said McConnell's admission makes it difficult to argue that the phone companies' cooperation with the government is a state secret. "It's going to be tough to continue to call it 'alleged' when he's just admitted it," Kris said.

Ross Feinstein, a spokesman for McConnell, declined to comment, as did spokesmen for AT&T and Verizon.

A challenge for the plaintiffs is to make a case using only public facts, said Kris, co-author of a new book, "National Security Investigations and Prosecutions." McConnell has just added to "the list of publicly available facts that are no longer state secrets," increasing the plaintiffs' chances that their cases can proceed, Kris said.

McConnell's statement "does serious damage to the government's state secrets claims that are at the heart of its defenses," said Greg Nojeim, senior counsel at the Center for Democracy and Technology and an expert on state secrets privilege.

In his interview, McConnell also said that open discussion on matters such as these "means that some Americans are going to die."

But Bruce Fein, an associate deputy attorney general in the Reagan administration, said that McConnell's disclosure shows that "an important element of a program can be discussed publicly and openly without endangering the nation."

Fein noted that in the 1970s, President Richard Nixon argued national security would be harmed if the Church Committee permitted hearings on government surveillance of civilians. "These Cassandran cries that the earth is going to fall every time you have a discussion simply are not borne out by the facts," he said.

McConnell also said telecom firms should have immunity from lawsuits.

"If you play out the suits at the value they're claimed, it would bankrupt these companies," he said.

The Bush administration has urged Congress to pass a law granting immunity to the telecom companies.