Senate and Bush Agree On Terms of Spying Bill
Some Telecom Companies Would Receive Immunity

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Senate Democrats and Republicans reached agreement with the Bush administration yesterday on the terms of new legislation to control the federal government's domestic surveillance program, which includes a highly controversial grant of legal immunity to telecommunications companies that have assisted the program, according to congressional sources.

Disclosure of the deal followed a decision by House Democratic leaders to pull a competing version of the measure from the floor because they lacked the votes to prevail over Republican opponents and GOP parliamentary maneuvers.

The collapse marked the first time since Democrats took control of the chamber that a major bill was withdrawn from consideration before a scheduled vote. It was a victory for President Bush, whose aides lobbed heavily against the Democrats' bill, and an embarrassment for House Speaker Nancy Pelosi (D-Calif.), who had pushed for the measure's passage.

The draft Senate bill has the support of the intelligence committee's chairman, John D. Rockefeller IV (D-W.Va.), and Bush's director of national intelligence, Mike McConnell. It will include full immunity for those companies that can demonstrate to a court that they acted pursuant to a legal directive in helping the government with surveillance in the United States.

Such a demonstration, which the bill says could be made in secret, would wipe out a series of pending lawsuits alleging violations of privacy rights by telecommunications companies that provided telephone records, summaries of e-mail traffic and other information to the government after Sept. 11, 2001, without receiving court warrants. Bush had repeatedly threatened to veto any legislation that lacked this provision.

Senate Democrats successfully pressed for a requirement that the Foreign Intelligence Surveillance Court review the government's procedures for deciding who is to be the subject of warrantless surveillance. They also insisted that the legislation be renewed in six years, Democratic congressional officials said. The Bush administration had sought less stringent oversight by the court and wanted the law to be permanent.

The domestic surveillance issue has been awkward for Democrats since the administration's secret program of warrantless counterterrorism surveillance became public in late 2005. In August, a coalition of Republicans and dissident Democrats passed a measure backed by the White House that put that program on firm legal ground by expressly permitting the government to wiretap foreign targets without a court order, including, under certain circumstances, when those targets are communicating with people in the United States.

But Democratic leaders insisted that the law expire in February, so they could try again to impose more
restrictions on the administration's ability to spy domestically. Most Democratic lawmakers and party members -- backed by civil libertarians and even some conservatives -- wanted the new legislation to ensure for example that future domestic surveillance in foreign-intelligence-related investigations would be overseen by the foreign surveillance court. The court was created in response to CIA and FBI domestic spying abuses unmasked in the mid-1970s.

But conservative Democrats worried about Republicans' charges that the Democratic bill extended too many rights to suspected terrorists. "There is absolutely no reason our intelligence officials should have to consult government lawyers before listening in to terrorist communications with the likes of Osama bin Laden, al-Qaeda and other foreign terror groups," said House Minority Leader John A. Boehner (R-Ohio).

The measure "extends our Constitution beyond American soil to our enemies who want to cut the heads off Americans," said Rep. Louie Gohmert (R-Tex.).

An adroit Republican parliamentary maneuver ultimately sank the bill. GOP leaders offered a motion that would have sent it back to the House intelligence and Judiciary committees with a requirement that they add language specifying that nothing in the measure would apply to surveilling the communications of bin Laden, al-Qaeda or other foreign terrorist organizations.

Approval of the motion would have restarted the legislative process, effectively killing the measure by delay. Democratic leaders scrambled to persuade their members to oppose it, but with Republicans accusing Democrats of being weak on terrorism, a "no" vote proved too hard to sell, and so the bill was pulled from the floor.

Stacey Bernards, a spokeswoman for House Majority Leader Steny H. Hoyer (D-Md.), called the Republican maneuver "a cheap shot, totally political."

Caroline Fredrickson, director of the Washington legislative office of the American Civil Liberties Union, called it a "perfect storm" of progressive Democrats who did not think the bill protected basic constitutional rights and of Republicans who took advantage of the lack of unity. "It was too precipitous a process, and it ended up in a train wreck," she said. "It was total meltdown."

The House bill contained safeguards against spying on U.S. citizens that the Bush administration said would have interfered with its national security investigations. Some liberals, on the other hand, complained that it still allowed the surveillance of Americans to occur without individual warrants.

It would have empowered the special surveillance court to issue warrants allowing the government to intercept for up to one year the phone calls and e-mails of groups of foreign targets, such as al-Qaeda or Hamas, without requiring that the surveillance of each person be approved. If the foreign target of the surveillance was calling a person in the United States significant enough also to be deemed an intelligence target, then an individual warrant would be required, as provided under past law.

The bill would have required the court to review the government's surveillance procedures to ensure that they were designed to target only people outside the country. Such reviews could be delayed up to 45 days after surveillance began in emergencies. It also would have barred warrantless physical searches in the United States, including of homes, offices, computers and medical records, and made clear that the National Security Agency and the CIA could not eavesdrop on targeted Americans, even those abroad, without a traditional court warrant.

It was unclear late yesterday whether similar provisions are included in the Senate version of the bill that attracted bipartisan support from lawmakers and key intelligence officials.

The Senate deal was reached after the White House made available to the intelligence committee some of the documents underlying the administration's post-Sept. 11 warrantless surveillance program, to
encourage the panel to include the telecommunications immunity provision.

Democrats warned yesterday that the Senate intelligence panel's consensus bill must gain the approval of the Senate Judiciary Committee, whose chairman and ranking Republican have said, like their House counterparts, that they are wary of granting immunity to telecommunications companies.

In June, the Judiciary Committee subpoenaed the documents underlying the warrantless surveillance program, and Chairman Patrick J. Leahy (D-Vt.) and ranking Republican Arlen Specter (Pa.) said they wanted to see those documents before endorsing any immunity clause. "I'm not going to buy a pig in a poke and commit to retroactive immunity when I don't know what went on" in the past, Specter said Tuesday on CNN's "Situation Room." "I agree with Arlen," Leahy said on the program.