

Congress moves toward expanding government spying, with immunity for telecoms

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The US Congress has taken steps this week toward passing a bill that would expand government spying powers while granting immunity to telecommunications companies that participated in violations of the law.

On Tuesday, the Senate voted to permanently extend the so-called Protect America Act, originally passed in August 2007. The bill passed by the Senate includes everything demanded by the Bush administration, including immunity for companies that participated in the National Security Agency's illegal warrantless domestic spying program.

The Bush administration is seeking to place the NSA program on a firmer legal footing by pushing through changes to the Foreign Intelligence Surveillance Act (FISA), which requires the government to obtain a warrant whenever it intercepts communications involving US residents.

The Protect America Act includes these changes, but the bill is set to expire on February 15. For this reason, the White House, and leading figures in both the Democratic and Republican parties, are pushing for a permanent extension.

The Senate bill received substantial bipartisan support, passing by a vote of 68-29, including 19 Democrats. By a similar margin, the Senate rejected an amendment that would have stripped the bill of the immunity provision.

Among those voting for the bill was Chairman of the Senate Intelligence Committee, Jay Rockefeller, who last year received \$42,000 in campaign contributions from AT&T and Verizon. Democratic presidential candidates Barack Obama and Hilary Clinton made the strategic decision not to vote. This meant that they were not on record opposing the bill and the telecommunications companies, but could still posture as opponents of the Bush administration while on the campaign trail.

On Wednesday, the House of Representatives voted to reject a bill sponsored by the Democratic leadership that would have provided for a 21-day extension of the Protect America Act. The rejection of the temporary extension opens the way for the House to consider the Senate's permanent extension.

The House had earlier passed a version of the bill that would expand spying powers without including immunity for the telecoms. On Wednesday, the House Democratic leadership sought to prevent the Senate version from reaching the floor, knowing that it would pass with significant support from within the Democratic Party itself.

On Wednesday morning, Bush once again engaged in fear mongering to pressure the House to pass the Senate version. "At this moment, somewhere in the world, terrorists are planning new attacks on our country," he said. "Their goal is to bring destruction to our shores that will make September the 11th pale by comparison."

Bush insisted, "The lives of countless Americans depend on our ability to monitor these communications." He said he would not accept any temporary extension by the House, demanding immediate passage of the Senate version. "The House's failure to pass the bipartisan Senate bill would jeopardize the security of our citizens," Bush declared.

On the question of immunity, Bush said, "If these companies are subject to lawsuits that could cost them billions of dollars, they won't participate; they won't help us; they won't help protect America."

There are currently about 40 court cases against these companies that the Bush administration wants to get thrown out. Major financial interests are involved, and the telecommunications companies have campaigned hard to have the immunity provision included.

Perhaps as important as the immediate interests of corporations such as AT&T and Verizon, however, is the precedent that the immunity provision will set. The Bush administration wants to make sure that corporations that cooperate with the government in violating the rights of American citizens will be immune from future prosecution.

There many ways in which the government has sought and will continue to seek corporate cooperation in carrying out actions that are in violation of law and the Constitution. With the immunity precedent, companies will more freely participate with less concern that they will have to fend off costly lawsuits or make financial settlements.

Kevin Bankston of the Electronic Freedom Foundation, which has sued AT&T on behalf of its customers, noted to the *Boston Globe*, "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. Therefore," he 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'."

The civil liberties lawsuits are one of the last avenues for investigating exactly what the NSA program involved and what the government continues to do. Democrats in Congress have refused to carry out any investigation into the Bush administration's illegal activities, while lawsuits against the intelligence agencies have been suppressed by invocation of the "state secrets" privilege. If the lawsuits against corporations are shut down, this will mean that these activities will continue to be carried out completely in the dark.

Both the House and Senate versions include a broad expansion of executive power to intercept communications in the US and abroad, though the House version included a few more restrictions. The original Protect America Act gives the president the authority to intercept communications broadly, while only requiring the highly secretive FISA court to certify that the procedure used to select targets would exclude US residents.

The president also was given the authority to intercept communications in which one end of the communication is "reasonably believed" to be outside the United States.

Perhaps most importantly, the act requires telecommunications companies to open up their domestic networks to the government. The argument used to justify this measure is that even communications between two targets outside the US can pass through US networks, and therefore the executive branch requires access to these networks.

The effect of this measure is to legalize the massive spying on domestic telephone calls and emails. Such programs have already been in effect, and some telecommunications companies, including AT&T, have reportedly opened their entire networks to the NSA. The law passed by Congress would give a legal imprimatur to this shredding of the Fourth Amendment protection against unreasonable searches and seizures.

While objecting to the immunity provision and certain minor aspects of the legislation, no section of the Democratic Party disputes the central premise of these measures—that they are necessary to protect against terrorist attacks. In fact, the “war on terror” is being used as a pretext to expand the ability of the government to monitor domestic political opposition.

Even in the areas where the Democrats disagree with the White House, they are not prepared to use their control of the legislature against it. The Republican minority in the Senate, by contrast, routinely makes use of the filibuster and other delaying tactics to block passage of measures they oppose—torpedoing last week an extension of unemployment benefits beyond the current 26-week maximum. The Democrats, despite having 51 seats in the Senate, well over the 40 required for a filibuster, have never used this power against any demand of the Pentagon or intelligence apparatus.

With majorities in both houses of Congress supporting immunity, a final bill including all the demands of the Bush administration will likely pass this week.

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