



December 17, 2007

**Re: Vote "NO" on cloture for S. 2248 and "YES" on the Amendment to Strip Retroactive Telecom Immunity for Illegal Surveillance of Americans**

Dear Senator,

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This weekend, the *New York Times* revealed that the warrantless wiretapping program approved by the President was far more sinister than previously known. The program started far in advance of September 11, collects purely domestic calls, and is not even limited to terrorism. In light of this new information, the Senate must not move forward with a bill that not only sanctions unconstitutional warrantless wiretapping, but provides full retroactive immunity for what are clearly still unknown activities. The ACLU strongly recommends that you vote "no" on cloture for S. 2248 and if cloture is adopted, "yes" on the amendment to strip out immunity from the underlying bill that will be offered by Senators Dodd, Leahy, Feingold, Obama, Sanders and Kennedy.

Most importantly, the *New York Times* discovered the following about warrantless surveillance programs previously thought to be conducted in the wake of 9/11 and in the name of the so-called "war on terror":

1. **It's Not About Terrorism.** The massive wiretapping and data collection program is not about defending us against future terrorist attacks -- the program started long before 9/11- in the 90s - and was ramped up by this Administration immediately after taking office. It is also routinely being used for run of the mill drug cases to collect U.S. persons' phone records that having nothing to do with terrorism.

2. **It's Not About Foreigners or Even International Calls.** The New York Times reveals that part of what made Qwest balk at the request in early 2001 was that the program was designed to pick up significant amounts of purely domestic communications by granting the NSA access "to their most localized communications switches, which primarily carry domestic calls" and that only "limited international traffic also passes through the switches." In fact, one anonymous engineer confirmed that in creating the program to copy all the calls coming across one company's wires, "There was no discussion of limiting the monitoring to international communications."

3. **More than Just One Company Thought Some Aspect of the Program Was Illegal.** The New York Times also for the first time confirms that Qwest was not the only company to have reservations about the program. We know Qwest was approached long before 9/11 and refused to participate at all. Now we know that at least one more company had concerns about the legality about the program and "balked" in 2004. This undercuts the government's claims that everyone agreed the programs were legal.

4. **This is Not a Surgical Program Narrowly Targeted at Terrorists.** Despite repeated assurances that the government does not conduct - and does not want to conduct - vast dragnet operations, "the N.S.A. met with AT&T officials to discuss replicating a network center in Bedminster, N.J., to give the agency access to all the global phone and e-mail traffic that ran through it."

In light of this new information, it is clear that Congress cannot make a meaningful and informed decision about wiretapping authority or immunity for past practices. For more information about how Americans feel about warrantless wiretapping and retroactive immunity, please visit, [www.aclu.org/fisapoll](http://www.aclu.org/fisapoll). Please vote "no" on cloture on S. 2248, and if cloture is adopted, "yes" on the amendment to strip out immunity from the underlying bill that will be offered by Senators Dodd, Leahy, Feingold, Obama, Sanders and Kennedy.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Fredrickson', written in a cursive style.

Caroline Fredrickson, Director  
Washington Legislative Office