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March 6, 2008

NEW WHISTLEBLOWER ALLEGATIONS WARRANT FURTHER INVESTIGATION OF RETROACTIVE IMMUNITY

Dear Colleague:

New evidence has surfaced that underlines the importance of evaluating all the facts concerning the Administration's request to shield telecommunications carriers from retroactive liability for violating their customers' privacy rights.

Yesterday, another whistleblower stepped forward with troubling charges that at least one major wireless telecommunications giant may have given a Governmental entity access to every communication coming through that company's infrastructure, including every e-mail, Internet use, document transmission, video, and text message, as well as the ability to listen in on any phone call.

Babak Pasdar, the chief executive officer of a computer security firm whose clients have ranged from multi-national corporations to small organizations, asserts that a major wireless carrier allowed a third party, known only as the "Quantico Circuit," access to all data communications in its network.

Mr. Pasdar was brought in by the carrier to upgrade its security system. In the course of his work, he discovered that an unidentified third party had been given unfettered and unsecured access to all of the data transmissions it carried. When Mr. Pasdar identified this security breach and made suggestions about how to correct the situation, representatives of the carrier reportedly refused to secure the network. Moreover, they refused to implement tracking programs to identify what data were accessed. Implicit in this charge is that, by refusing to take measures to secure the communications, access to vital data could be available to those seeking to harm American interests. Although he now comes forward at professional and personal risk, Mr. Pasdar, whose parents fled Iran when he was a child, felt compelled to go public because of the profound privacy and security risks he witnessed.

Mr. Pasdar's allegations are not new to the Committee on Energy and Commerce, but our attempts to verify and investigate them further have been blocked at every turn by this Administration. Moreover, this whistleblower's allegations echo those in an affidavit filed by Mark Klein, a retired AT&T technician, in the Electronic Frontier Foundation's lawsuit against AT&T. The merits of these claims have yet to be assessed by the Federal judge assigned to that case. Indeed, the court may not be able to assess them for quite some time, until the appellate courts finish sorting through threshold questions relating to the so-called "state secrets" doctrine. Should these defenses prevail, the court will dismiss the lawsuits out of hand before reaching any question of whether or how much money damages to impose. Even if the court permits the suits to go forward—long before any monetary award is evaluated—the court will have to determine whether the carriers did what the plaintiffs say they did.

In the meantime, the carriers who did—and did not—participate in wiretapping without court orders or warrants, are prohibited from talking to Congress. The President will not let them. However, he continues to ask that Members of this body, other than the limited number to whom he has given grudging and belated access, to vote in the dark. Because legislators should not vote before they have sufficient facts, we continue to insist that all House Members be given access to the necessary information, including the relevant documents underlying this matter, to make an informed decision on their vote. After reviewing the documentation and these latest allegations, Members should be given adequate time to properly evaluate the separate question of retroactive immunity.

Sincerely,

John D. Dingell
Chairman

Edward J. Markey
Chairman
Subcommittee on Telecommunications
and the Internet

Bart Stupak
Chairman
Subcommittee on Oversight and Investigations