

US Senate moves to grant immunity to telecoms complicit in illegal wiretapping

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The Democratic-controlled Senate moved Thursday to shield telecommunications companies that aided the Bush administration's illegal domestic spying program from lawsuits. By a vote 60 to 36, the Senate rejected any provision in its upcoming amendment to the 1978 Foreign Intelligence Surveillance Act (FISA) that would open the companies to prosecution in civil courts.

Congress passed a temporary amendment to the FISA Act before its Labor Day break in August, which included retroactive protection for the telecom companies complicit in the administration's illegal wiretapping. That amendment is set to expire on Friday, and Congress is seeking to work out a replacement before then.

While debate over the Senate bill will continue into next week, the House has already passed a draft of the bill that did not include immunity. If the Senate finalizes its version next week, it will move on to be reconciled with the House version, where it can be expected that an immunity clause will be inserted into the final document.

For its part, the White House said it would veto any bill that did not include complete immunity for companies that aided its illegal program. The Bush administration and congressional Republicans are also strongly pressing for an expansion of the bill's provisions, and not simply a renewal of the temporary law passed six months ago.

The Senate picked up the bill this week after laying it aside in mid-November. Senate Majority Leader Harry Reid apparently moved to postpone the debate when it became apparent that the bill could not be completed before Congress took its holiday break.

In view of differences that have arisen over a replacement bill, House Intelligence Committee Chairman Silvestre Reyes (Dem.-Texas) and Judiciary Committee Chairman John Conyers (Dem.-Mich.) proposed extending the current law—which is set to expire February 1—for another 30 days.

However, Senate republicans blocked such an effort

Tuesday, in line with views expressed by Vice President Dick Cheney, who commented Wednesday, "There is no sound reason to pass critical legislation like the Protect America Act and slap an expiration date on it."

The day before the vote, Cheney gave a speech at the Heritage Foundation, a conservative think-tank, in which he demanded immunity for telecommunications companies that had participated in the program and said the FISA expansion bill should be passed as quickly as possible.

A number of Senate Democrats agreed to vote for the preservation of the immunity clause following the Bush administration's agreement on Thursday to Democrats' demands that it show them classified documents relating to the warrantless domestic spying program.

Senate Republicans supporting the inclusion of an immunity clause were supported by a number of Democrats, most notably Senate Intelligence Committee Chairman Jay Rockefeller (W.Va.). Presidential hopefuls Hillary Clinton and Barack Obama were absent during Thursday's vote and it is unclear whether they will participate on Monday, when the debate is set to continue.

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Sometime around September 2001, the Bush administration illegally authorized the National Security Agency (NSA) to intercept data from people within the US without first obtaining warrants. This was in violation of the 1978 FISA act, which set up a secret court to authorize surveillance within the US. Congress retroactively legalized the Bush administration's program by passing last August 5 the Protect America Act of 2007, which is set to expire February 1.

If the bill is not renewed, government agencies complain that they will have to resort to getting individual court orders in order to spy on communications that pass through the US telecom infrastructure. The

Democrats—even those calling for a rejection of the immunity clause—do not want to leave the intelligence agencies out in the cold, fearful of being seen as “soft on terrorism.”

House Majority Leader Harry Reid, in bemoaning the Republicans’ demands, said, “It appears that the Republicans want failure. They don’t want a bill.” The debate—even to the limited extent that the Democrats are willing to draw it out—revolves around the best way to manage the massive domestic spying program implemented illegally by the Bush administration.

Mike McConnell, the national director of intelligence, is currently working on a bill that would simply do away with the FISA court and create conditions under which intelligence agencies could spy without the added burden of obtaining warrants. Such a bill could then be applied retroactively to shield the telecommunications companies from prosecution. In promoting the bill, McConnell raised the specter of an imminent terrorist attack, stating recently, “My prediction is that we’re going to screw around with this until something horrendous happens.”

Democrats and Republicans alike have announced their support for immunity on the grounds that they do not want to hurt the balance sheets of telecommunications companies. There are currently some 40 lawsuits filed against the telecoms by individuals and groups in relation to the wiretapping. These cases have already unearthed a number of details the Bush administration would prefer to leave hidden, including testimony by a former AT&T employee that the company let out space within one of its main routing facilities, which was used to direct traffic directly to the NSA.



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