

Bush renews demands for telecom immunity as Democrats seek compromise on spy bill

Joe Kay
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US President George Bush used a Thursday White House press conference to issue a belligerent demand that Congress pass a bill effectively gutting Constitutional protections against government spying while granting immunity to telecommunications companies that helped the administration break the law.

The bullying tone of the president, who repeatedly banged the podium while warning of supposed imminent dangers posed by the Congressional delay in renewing the administration's unfettered power to conduct domestic wiretapping, stood in sharp contradiction with the overwhelming popular hostility towards Bush, whose standing in the polls has fallen to record lows. Despite his deepening political isolation, the Republican president is justifiably confident that the Democratic majority in Congress will ultimately bow to his demands.

Democrats in Congress are largely agreed on measures to permanently expand government spying and give the executive branch unfettered access to telecommunication systems. These are incorporated in different versions of the so-called Protect America Act passed by the Senate and the House.

Democrats are split, however, on the question of retroactive immunity—which would immediately eliminate over 40 class action lawsuits involving the secret National Security Agency (NSA) warrantless wiretapping program. Earlier this month, House Democratic leaders blocked a vote on a Senate bill that includes immunity. Both the House and Senate versions include prospective immunity for future actions.

The White House has insisted that Congress pass the Senate version of the bill, while Democrats are looking to negotiate a compromise between the two versions. Congress should act on a “very urgent priority,” Bush said Thursday, “to pass legislation our intelligence officials need to quickly and effectively monitor terrorist communications.”

In an indication that the House Democrats are preparing to cave in to White House pressure, House Majority Leader Steny Hoyer said on Thursday that he was “very hopeful” the House would take up the surveillance legislation next week, before the beginning of the legislative body's spring break.

“If any of these companies helped us,” Bush declared at the press conference, “they did so after being told by our government that their assistance was legal and vital to our national security.” In other words, if the White House says it is OK, there should be no recourse against companies that illegally violated the privacy of their customers. The Bush administration has blocked separate

lawsuits against the government, employing the argument of “state secrets.”

Bush indicated one of the real reasons the immunity question is so important when he said, “Allowing the lawsuits to proceed could aid our enemies, because the litigation process could lead to the disclosure of information about how we conduct surveillance, and it would give Al Qaeda and others a roadmap as to how to avoid the surveillance.”

The reference to Al Qaeda is a red herring, but it is true that the lawsuits against the telecommunications companies, if allowed to proceed, could reveal certain aspects of the NSA program that the administration has sought to keep secret.

The administration acknowledged the existence of a limited program in 2005, but the surveillance is almost certainly far broader than has been acknowledged. An employee at AT&T has said that the company opened up a separate room for the NSA and gave it uncontrolled access to all communications. There are also indications that the warrantless wiretapping of domestic communications—a violation of the 1978 Foreign Intelligence Surveillance Act and the US Constitution—began before the attacks of September 11, 2001. Those attacks have been used as the universal pretext for the massive attack on democratic rights in the United States.

The Democratic-controlled Congress passed an initial version of the Protect America Act in August 2007. Among other measures, the Act allows for warrantless surveillance “directed at a person reasonably believed to be located outside the US.” It also allows the executive branch to order spying for up to one year, so long as the spying “concerns” someone outside the US.

Both of these provisions provide wide scope for warrantless spying on domestic communications. Indeed, the monitoring of members of Al Qaeda or other allegedly terrorist organizations located outside the US—the ostensible purpose of the program—is allowed under pre-existing legislation.

Most significantly, the act requires telecommunications companies to open their facilities to the government, providing the executive branch with direct and unmonitored access to all emails, telephone records and other communications. The law violates the separation of powers by giving the executive branch supervisory authority over its own spying activities.

The legislation included a sunset provision that caused the bill to expire on February 1. This was later temporarily extended to February 15.

Bush administration officials have repeatedly noted that the Senate bill for a permanent extension with immunity was passed with substantial bipartisan support (on a vote of 68-29) and that it would receive a majority in the House if it were put to a vote.

Bush has refused to sign another temporary extension of the bill under the assumption that the Democrats in the House would capitulate, as they have many times before. The refusal of the House Democratic leadership to pass the bill immediately may reflect a certain weakening in the position of the Bush administration. Nevertheless, the White House is aggressively pushing ahead, confident in an eventual submission by the Democratic Party.

The administration has seized on the non-action of the House to paint the Democrats as “soft on terror.” The Republicans are planning on using fearmongering over terrorism as the basis of the upcoming election campaign.

In his radio address last weekend, Bush warned ominously, “Somewhere in the world, at this very moment, terrorists are planning the next attack on America. And to protect America from such attacks, we must protect our telecommunications companies from abusive lawsuits.”

Late last week, Director of National Intelligence Mike McConnell and Attorney General Michael Mukasey wrote a letter to chairman of the House Intelligence Committee Silvestre Reyes, warning, “We have lost intelligence information this past week as a direct result of the uncertainty created by Congress’ failure to act.” This was because some companies had “delayed or refused compliance” in the absence of immunity, they said.

On Saturday, a White House spokesman acknowledged that, in fact, all the telecommunications companies had agreed to continue helping the government “for the time being.”

Shortly after the House decided not to pass the Senate bill, House Republicans released a video warning that “America is at risk.” A Republican-connected organization, Defense of Democracies, has produced television advertisements, complete with photographs of Osama Bin Laden, targeted at House Democrats in close congressional districts.

Republicans have scuttled several attempts by Democrats to reach some accommodation with the White House. According to an article in *Newsweek*, “Democratic leaders say the administration has boycotted ‘multiple’ meetings intended to find a compromise that would be acceptable to House and Senate leaders and the president.” Republican Congressional staffers also boycotted initial conference discussions to reconcile the House and Senate bills.

Predictably, the Democrats have adapted themselves completely to the “war on terror” rhetoric used to justify domestic spying. The outlook of the Democrats was summarized in a column published in the *Washington Post* on February 25. It was signed by Reyes, Senate Intelligence Committee Chair Jay Rockefeller, Senate Judiciary Chair Patrick Leahy, and House Judiciary Chair John Conyers.

Accepting the framework of the “war on terror,” the Congressmen admonished Bush for not “working with Congress to achieve the best policies to keep our country safe.” They went on to insist that the temporary expiration of the Protect America Act

would have no effect on the spying powers of US intelligence agencies. “Despite President Bush’s overheated rhetoric on this issue, the government’s orders under that act will last until at least August. These orders could cover every known terrorist group and foreign target,” the column insisted.

The legislators continued by stating, “A key objective of our effort is to build support for a law that gives our intelligence professionals not only the tools they need but also confidence that the legislation they will be implementing has the broad support of Congress and the American public.” There is clearly concern among sections of the Democrats that agreeing to immunity will further discredit the party in the eyes of its own supporters.

The column concluded with the assertion, “We are united in our determination to produce responsible legislation that will protect America and protect our Constitution.”

The authors of the column did not explain what they considered to be unconstitutional in the President’s demands. Nor could they, since both the House and the Senate passed the Protect America Act last year, acceding to all these unconstitutional demands. The Senate, moreover, has agreed to immunity as well. Rockefeller, as head of the Senate Intelligence Committee, has been directly complicit in most aspects of the Bush administration’s illegal and unconstitutional actions—everything from wiretapping to waterboarding.

Absent in the conflict between the White House and sections of the Democratic Party is any discussion of the real motive for the expansion of domestic spying powers. Under conditions of mounting economic crisis and unending war, the political establishment is determined to push through measures that will provide legal cover for a program to access and database communications on a scale without historical precedent. These measures are targeted at any individual or organization that opposes the policies of the American ruling elite, represented by both the Democrats and Republicans.

If some form of immunity eventually gets through, as is likely, this will create the precedent for a much broader government-corporate collaboration in the destruction of democratic rights in the United States.



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