

Obama administration moves to strengthen wiretapping law

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Obama administration officials are pushing to strengthen a federal law facilitating telecommunications wiretapping. The move illustrates how Obama is fine-tuning and expanding the police-state apparatus developed by his predecessors, including Bush.

The *New York Times* reports Tuesday that an administration task force, including officials from the Justice and Commerce departments, the FBI and other agencies, are working on draft legislation to expand a 1994 law, the Communications Assistance to Law Enforcement Act (CALEA), that requires phone and broadband carriers to allow their networks to be wiretapped. Although there is reportedly no agreement yet on details of the changes, the Obama administration intends to submit a package for a vote in Congress next year.

Government officials argue that system upgrades at some telecommunication companies in recent years have thrown up technical obstacles to FBI surveillance efforts. According to the *Times*, the security agencies want to increase “legal incentives and penalties” to be used against carriers such as Verizon, AT&T and Comcast to ensure that the government’s spying activities are not thwarted.

Less than a month ago, it was reported that the Obama administration was mounting an effort to bring Internet communication companies like Gmail, Facebook, Blackberry and Skype under the scope of CALEA as well.

To support their claim that the law needs to be beefed up, security agency officials have pointed to two episodes in which major carriers attempting to comply with court-approved wiretapping orders in criminal or terrorism-related investigations were unable to abide by the order for weeks or months due to changes in their

telecommunications systems. Under the 1994 law, these companies are supposed to design their services so that surveillance of a target can begin immediately after they are presented with a court order.

Beginning in 2008, according to a law enforcement official who spoke to the *Times*, a “major communications carrier” was unable to comply with more than 100 court-ordered wiretaps over a period of more than eight months. In an incident this year, another carrier was unable to comply with 14 wiretap orders. The same official said this company’s interception system “works sporadically and typically fails when the carrier makes any upgrade to its network.”

In both instances, the FBI sent out engineers to help the companies resolve the technical issues. Highlighting the scope of the FBI’s spying operations, the agency spends more than \$20 million a year on such technical aid to insure that these wiretapping orders are carried out.

Under provisions of CALEA, after receiving an order telecommunications carriers must begin surveillance immediately and provide details on its wiretapping target—such as the content of a call or email, and identifying information like its recipient, time and location.

If the company complies, it receives the dubious status as a “safe harbor” for government spying, which means it cannot be fined. If, on the other hand, a carrier fails to meet this standard, the company can be fined by a judge or the Federal Communications Commission (FCC). This rarely take place in practice, however, due mainly to reluctance on the part of government officials to alienate the companies that are doing its surveillance work.

According to the *Times*, one of the proposals now

being considered would “increase the government’s leverage over carriers,” increasing the likelihood that companies would pay a financial penalty if lapses occurred in delivering surveillance details. The FCC could impose retroactive fines after the problems were fixed, or bill companies for the cost of bringing in FBI technicians to resolve the problems.

Another proposal could allow carriers to achieve “safe harbor” status by showing their new systems to the FBI before deploying them, thus facilitating future spying while ensuring they not be fined.

In 2007, the FBI asked the FCC to make more than a dozen changes to standards for “safe harbor” compliance, including adding a mandate that would require companies to turn over more information about cell phone locations. The FCC has yet to act on that petition.

Marc Rotenberg, president of the Electronic Private Information Center, commented to the *Times*, “We think that the FCC has already conceded too much to the bureau. The FBI’s ability to have such broad reach over technical standard-setting was never anticipated in the 1994 act.”

Since Obama came to office, administration officials have moved to expand the government’s spying apparatus, while at the same time embracing the pseudo-legal arguments advanced by the Bush administration in its “war on terror” to advance its operations. While the FBI’s surveillance activities have been widened under provisions of the Patriot Act, signed into law in the wake of the 9/11 terror attacks, the agency often operates in violation of this law’s anti-democratic provisions.

Within weeks of his inauguration, Obama administration lawyers on February 11, 2009 filed papers to block the order of a US district judge reinstating the claim of the Al-Haramain Islamic Foundation that it was the target of government wiretapping without court approval. The patently illegal surveillance took place before the Bush administration designated the Oregon-based charity a “Specially Designated Global Terrorist” organization and froze its assets.

This September, a federal appeals court dismissed a lawsuit on behalf of victims of the CIA’s “extraordinary rendition program.” Citing “state secrets” privilege, the Obama administration had

intervened in *Mohamed v. Jeppesen Dataplan Inc* to quash a case brought on behalf of individuals kidnapped and transported to third countries to be interrogated under torture.

Building on practices used under Bush, the Obama administration maintains that the federal government has the authority to arrest and detain indefinitely, without trial, anyone engaged in “terrorist” activities. Justification for spying on many of the countless thousands targeted for surveillance by the FBI is based on their being labeled as “terrorists.” The administration’s new move to strengthen provisions of the 1994 wiretapping law aims to bolster these antidemocratic methods.



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