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May 24, 2006

By Facsimile (503) 378-5743 and U.S. Mail

Lee Beyer, Chairman
Oregon Public Utility Commission
550 Capitol St. NE, #215
PO Box 2148
Salem, Oregon 97308-2148

**Re. Complaint and Request for Investigation of Verizon, Sprint, and
Qwest**

Dear Chairman Beyer:

The American Civil Liberties Union of Oregon, on behalf of itself and its approximately 15,000 members in Oregon, files this Complaint pursuant to ORS 756.500 in order to ensure that the Public Utility Commission (“Commission”) investigates whether Oregon’s large, local telecommunication providers, Verizon Northwest Inc., Sprint/United Telephone Company of the Northwest, or Qwest Corporation, or any of their subsidiaries doing business in Oregon,¹ are cooperating with the National Security Agency (“NSA”) in connection with either the warrantless wiretapping or the telephone records data collection program widely reported by the news media in recent weeks.² Due to the NSA’s apparent objective to compile a database of all toll calls, we believe an investigation should extend to all large telecommunication utility companies doing business in Oregon.³

The ACLU of Oregon is a statewide nonprofit and nonpartisan public interest organization devoted to protecting the basic civil liberties of all persons in Oregon. We have members who reside in all parts of the state who are residential telephone subscribers. In addition, the ACLU of Oregon itself is a business subscriber of Qwest and we reasonably believe that in the normal course of doing business in Oregon we receive calls from Oregon residents using Verizon, Sprint, Qwest and other local and long distance telecommunication providers.⁴

¹ The addresses of each of the three corporations, and the names (of which we are aware) of their subsidiaries doing business in Oregon, are attached as Appendix A to this Complaint.

² Although not named in the original story, Sprint has refused to disavow participation in the NSA program: “Due to the sensitive nature of the topics currently being reported in the press related to the National Security Agency and their intelligence gathering program, Sprint Nextel is not discussing these matters.” <http://www.sprint.com/legal/privacy.html>. Likewise, although former Qwest CEO Joseph Nacchio has stated that, under his tenure, Qwest refused to comply with the NSA requests, a Qwest spokesman Robert Toevs has declined to discuss this matter, neither confirming nor denying Mr. Nacchio’s actions nor current Qwest practices. John O’Neil and Eric Lichtblau, “Qwest’s Refusal of N.S.A. Query is Explained” *New York Times*, May 12, 2006. AT&T and BellSouth are not named in this Complaint because they do not provide local telecommunication services in Oregon.

³ In addition to the three companies listed, we request that any other telecommunications company that qualifies as a large telecommunications utility as defined by OAR 860-023-001(5) be included in any investigation.

⁴ ACLU of Oregon receives and places calls through its general number: 503-227-3186. Our mailing address is PO Box 40585, Portland, Oregon 97240. Our Qwest account number is available upon request.

As the state body charged with safeguarding consumers from wrongdoing by utilities and with broad authority under ORS Chapter 756, we hereby call on you to investigate the reported allegations of this very serious invasion of privacy.

In a May 11, 2006 article in *USA Today*, it was reported that at least three phone companies, AT&T, BellSouth and Verizon, have provided the NSA with the personal calling details of customers, including telephone numbers called, time, date, and direction of calls. Leslie Cauley, “NSA Has Massive Database of Americans’ Phone Calls,” *USA Today*, May 11, 2006. If true, these companies and any other phone companies which have also engaged in this practice, have systematically and flagrantly violated the privacy rights of their customers by sharing information that reveals their associations, interests and a host of personal details about their lives.

USA Today described the information that companies made available to the government as relating to billions of telephone calls made by millions of residential phone customers. According to sources in the story these companies provided this information with neither the consent of their customers nor under the compulsion of a warrant, court order, or other legal process from the government. The information provided to the government about these telecommunication customers can be easily matched with other databases to obtain the name and residence of each caller. This information would enable the government to track every long distance phone call made by every Oregon residential and business customer, including the identity of the people they have called and the length of each conversation.

While there are many procedures available to the government that may be used to lawfully obtain such records—when it has individualized suspicion of wrongdoing by one or both parties to a call—the NSA reportedly chose to gain access to customer call records without the use of any legal process.⁵ The Commission should make clear to telecommunications companies doing business in Oregon that no American—not even the President—is above the law.

Any such unauthorized sharing of phone record information would appear to violate the customer service agreements of Verizon, Sprint and Qwest. All three limit the release of personal customer information, referred to as Customer Proprietary Network Information (“CPNI”), to only that *required* by law.⁶ Verizon states that “for more than a century, customers have counted on Verizon’s telephone companies to respect and protect the privacy of information we obtain in the normal course of providing services.” It assures its customers that it does not disclose customer information outside of Verizon except in limited circumstances when so required by law: “Verizon must disclose information, as necessary, to comply with *court orders or subpoenas*” (emphasis added).⁷ Sprint states that it is committed to protecting the privacy of its customers and discloses customer information “*only* when necessary to *comply* with the law” (emphasis added).⁸ Qwest states that it will “not sell or disclose CPNI, *except as required by law*” (emphasis added).⁹

⁵ Herbert J. Stern, attorney for former Qwest CEO Joseph N. Nacchio; John O’Neil and Eric Lichtblau, “Qwest’s Refusal of N.S.A. Query is Explained” *New York Times*, May 12, 2006.

⁶ CPNI is information the phone company obtains that relates to the “quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service” by any customer and “is made available to the carrier by the customer solely by virtue of the carrier-customer relationship” as well as “information contained in the bills . . . or telephone toll service received by a customer.” 47 USC §222, *see also* OAR 860-032-0510(3)(d). Examples of CPNI include number and type of lines, current charges, long distance billing records, local services (for example, subscriptions to custom calling services), directory assistance charges and bill summary (when and who a subscriber calls).

⁷ <http://www2.verizon.com/about/privacy/customer/>

⁸ <http://www.sprint.com/legal/privacy.html>

⁹ <http://www.qwest.com/cpni/index.html>

We are aware that some of these companies have issued statements in recent days regarding their participation in this record-sharing program. Verizon has issued ambiguous statements about its and its subsidiaries' actions and Qwest and Sprint have not disavowed cooperation with the NSA.¹⁰

The recent news media reports disclosing warrantless wiretapping by the NSA and that at least three national telecommunications companies have been providing information about private toll calls made by subscribers are too serious and too well founded to be dismissed without a thorough investigation. In addition to the *USA Today* story, the *New York Times* ran a series of stories describing a broader program of wiretapping by the NSA and alleging cooperation by "the leading companies" in the telecommunications industry. Eric Lichtblau and James Risen, "Spy Agency Mined Vast Data Trove, Officials Report," *New York Times*, December 24, 2005. Further it has been widely reported that a former AT&T employee has come forward as part of a lawsuit filed by the Electronic Frontier Foundation stating that he has witnessed the installation of special information gathering equipment by the NSA in AT&T's switching network.

None of the reported activities are permitted under federal law or the provisions of the United State Constitution. We believe such actions would also constitute violations of Oregon law, to the extent such activities involved Oregon customers or records of intrastate conversations or toll calls. In short, we have a well-founded belief that these telecommunications companies have violated the privacy rights of Oregonians as well as their own customer service agreements.

We urge the Commission to thoroughly investigate these Oregon service providers in order to determine whether one or more of the companies took any actions to provide the NSA with the content of communications or customer records of toll calls in violation of their tariffs, conditions of service, customer service agreements,¹¹ the Certificates of Authority required under ORS 759.020 and relevant OARs, including but not limited to OAR 860-032-0510 (which limits the release of customer CPNI unless related to the provision of services to the customer or at the customer's request), as well as any other state law, rules, regulations, orders, decisions and requirements of the Public Utility Commission.

The Commission has jurisdiction and the broad power to investigate these telecommunication utilities. ORS Chapter 756. The Commission has the duty to represent and protect the customers and the public in general in all controversies respecting telecommunication services and to do "all things necessary . . . in the exercise of such power." ORS 756.040. The Commission has the authority to "inquire into the management of the business of all . . . telecommunications utilities and shall keep informed as to the manner and method in which they are conducted and has the right to obtain from any . . . telecommunications utility *all necessary information to enable the commission to perform duties.*" ORS 756.070 (emphasis added).

Oregon law is clear that the Commission not only has the authority but the duty to investigate these claims. "The Public Utility Commission *shall* inquire into any neglect or violation of any law of this state or any law or ordinance of any municipality thereof relating to public utilities and telecommunications utilities by any public utility or telecommunications utility doing business therein, its officers, agents or employees and *shall* enforce all laws of this state relating to public utilities and telecommunication utilities." ORS 756.160(1) (emphasis added). "The commission *shall* report all violations of any such laws or ordinances to the Attorney

¹⁰ See *supra*, footnote 2; Another Qwest spokesman Robert Charlton stated "We can't talk about this. It's a classified situation." Leslie Cauley "NSA Has Massive Database of Americans' Phone Calls," *USA Today*, May 11, 2006.

¹¹ See *supra*, footnotes 7-9 setting forth customer service agreement privacy policies.

General.” Id (emphasis added). In turn the Attorney General of Oregon shall assist the Commission in the administration and enforcement of all laws administered by the Commission and diligently prosecute all persons whom they have reasonable cause to believe guilty of any such laws, rules, regulations, orders, decisions or requirements of the Commission. ORS 756.160(2).

In carrying out its investigatory powers, the Commission shall “upon demand, have the right to inspect the books, accounts, papers, records and memoranda of any . . . telecommunications utility and to examine under oath any officer, agent or employee of such . . . telecommunications utility in relation to its business and affairs.” ORS 756.075(2). The Commission has the authority to order or subpoena records maintained in-state as well as out-of-state. ORS 756.090(1) and (2). And every telecommunications utility “shall furnish to the Public Utilities Commission *all* information required by the commission to carry into effect the provisions” set forth in Oregon law. ORS 756.105 (emphasis added). Failure or refusal to comply or knowingly or willfully giving a false answer to any such Commission inquiry shall subject a telecommunications utility and its officers, agents or employees to civil penalties. See ORS 756.115, ORS 756.990.

Again, we ask the Commission to fully investigate this Complaint and determine if there has been any violation of Oregon law, rules, regulations, orders, decisions and requirements of the Oregon Public Utility Commission by Verizon, Sprint, Qwest or any other Oregon large telecommunications utility doing business in Oregon, in sharing or providing access to records of subscriber telephone calls or telephone conversations. Further, if the Commission discovers such violations, we urge you to issue a declaratory ruling under ORS 756.450, require immediate cessation of any and all violations and order penalties under ORS 756.990, in addition to any other action the Public Utility Commission is authorized to take in this matter.

We ask the Commission to keep us fully apprised throughout its investigation and provide us with copies of all communications issued and received by the Commission related to this Complaint.

Very truly yours,

Andrea Meyer
Legislative Director/Counsel, ACLU of Oregon
OSB No. 93365

ACLU Foundation of Oregon
PO Box 40585
Portland, Oregon 97240
(503) 227-3186

cc: Commissioner Ray Baum
Commissioner John Savage
Paul Graham, Oregon Department of Justice

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APPENDIX A

Defendant Telecommunication Utilities:

1. Verizon Northwest Inc.
20575 NW Von Neumann Drive #150
Beaverton, OR 97006
2. Sprint/United Telephone Company of the Northwest
902 Wasco Street
Hood River, OR 97031
3. Qwest Corporation
421 Oak Street, Suite 810
Portland, OR 97204

Defendant Subsidiaries Doing Business in Oregon

1. Verizon
 - a. Verizon Select Services, Inc.
 - b. MCI Communications Services Inc.
 - c. MCI Metro Access Transmission Services LLC
2. Sprint/United Telephone Company of the Northwest
 - a. Sprint Communications Co. LP
 - b. Sprint Payphone Services, Inc.
3. Qwest Corporation
 - a. Qwest Communications Corp.
 - b. Qwest LD Corp.