Exhibit 4

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

THE UNITED STATES OF AMERICA, Plaintiff, v. STEVE GAW, in his official capacity as Commissioner of the Missouri Public Service Commission; ROBERT M. CLAYTON, III, in his official capacity as Commissioner of the Missouri Public Service Commission; SOUTHWESTERN BELL TELEPHONE, L.P.; SBC ADVANCED SOLUTION, INC.; SBC LONG DISTANCE, LLC; AT&T COMMUNICATIONS OF THE SOUTHWEST, INC.; TCG ST. LOUIS HOLDINGS, INC.; TCG KANSAS CITY, INC. Defendants.	)	CIVIL ACTION NO.: COMPLAINT

Plaintiff, the United States of America, by its undersigned attorneys, brings this civil action for declaratory and injunctive relief, and alleges as follows:

INTRODUCTION

1. In this action, the United States seeks to prevent the disclosure of highly confidential and sensitive government information that the defendant officers of the Missouri Public Service Commission have sought to obtain from telecommunications carriers without proper authorization from the United States. Compliance with the subpoenas issued by those officers would first place the carriers in a position of having to confirm or deny the existence of information that cannot be confirmed or denied without causing exceptionally grave harm to national security. And if particular carriers are indeed supplying foreign intelligence information

to the Federal Government, compliance with the subpoenas would require disclosure of the details of that activity. The defendant state officers' attempts to obtain such information are invalid under the Supremacy Clause of the United States Constitution and are preempted by the United States Constitution and various federal statutes. This Court should therefore enter a declaratory judgment that the State Defendants do not have the authority to seek confidential and sensitive federal government information and thus cannot enforce the subpoenas they have served on the telecommunications carriers.

JURISDICTION AND VENUE

2. The Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1345.

3. Venue lies in the Eastern District of Missouri pursuant to 28 U.S.C. § 1391(b)(1)-(2). This action properly lies in the Eastern Division of this District. LCvR 3-2.07(A)(1) & (B)(2).

PARTIES

4. Plaintiff is the United States of America, suing on its own behalf.

5. Defendant Steve Gaw is a Commissioner on the Missouri Public Service Commission, and maintains his offices in Cole County. He is being sued in his official capacity.

6. Defendant Robert M. Clayton, III is a Commissioner on the Missouri Public Service Commission, and maintains his offices in Cole County. He is being sued in his official capacity.

7. Defendant Southwestern Bell Telephone, L.P. is a corporation incorporated in the state of Texas with its principal place of business in Texas that has offices in the City of St. Louis, Missouri and that has received a subpoena in Missouri.

8. Defendant SBC Advanced Solutions, Inc. is a corporation incorporated in the state of Delaware with its principal place of business in the state of Texas, that has offices in St. Louis County, Missouri, and that has received a subpoena in Missouri.

9. Defendant SBC Long Distance, LLC is a corporation incorporated in the state of Delaware with its principal place of business in the state of California, that has received a subpoena in Missouri.

10. Defendant AT&T Communications of the Southwest, Inc. is a corporation incorporated in the state of Delaware with its principal place of business in the state of New Jersey, that has offices in St. Louis County, Missouri, and that has received a subpoena in Missouri.

11. Defendant TCG St. Louis Holdings, Inc. is a corporation incorporated in the state of Missouri with its principal place of business in the state of New Jersey that has offices in St. County, Missouri, and that has received a subpoena in Missouri.

12. Defendant TCG Kansas City, Inc. is a corporation incorporated in the state of Delaware with its principal place of business in the state of New Jersey, that has no offices Missouri, and that has received a subpoena in Missouri.[1]

13. Defendants Southwestern Bell Telephone, L.P., SBC Advanced Solutions, Inc., SBC Long Distance, LLC, AT&T Communications of the Southwest, Inc., TCG St. Louis Holdings, Inc., and TCG Kansas City, Inc. are referred to as the "Carrier Defendants."

STATEMENT OF THE CLAIM

I. The Federal Government Has Exclusive Control Vis-a-Vis the States With Respect to Foreign-Intelligence Gathering, National Security, the Conduct of Foreign Affairs, and the Conduct of Military Affairs.

14. The Federal Government has exclusive control vis-a-vis the States over foreign-

[1] Defendants Gaw and Clayton have not sought enforcement of the subpoenas with respect to TCG Kansas City, Inc., so the paragraphs below discussing enforcement deal solely with the other Carrier Defendants.

intelligence gathering, over national security, and over the conduct of war with foreign entities. The Federal Government controls the conduct of foreign affairs, the conduct of military affairs, and the performance of the country's national security function.

15. In addition, various federal statutes and Executive Orders govern and regulate access to information relating to foreign intelligence gathering.

16. For example, Section 102A(i)(1) of the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458, 118 Stat. 3638 (Dec. 17, 2004), codified at 50 U.S.C. § 403-1(i)(1), confers upon the Director of National Intelligence the authority and responsibility to "protect intelligence sources and methods from unauthorized disclosure."

17. Federal law also makes it a felony for any person to divulge classified information "concerning the communication intelligence activities of the United States" to any person who has not been authorized by the President, or his lawful designee, to receive such information. 18 U.S.C. § 798.

18. And federal law establishes unique protections from disclosure for information related to the National Security Agency. Federal law states that "nothing in this . . . or any other law . . . shall be construed to require disclosure of . . . any function of the National Security Agency, [or] of any information with respect to the activities thereof." 50 U.S.C. § 402 note.

19. Several Executive Orders have been promulgated pursuant to these constitutional and statutory authorities that govern access to and handling of national security information.

20. First, Executive Order No. 12958, 60 Fed. Reg. 19825 (April 17, 1995), as amended by Executive Order No. 13292, 68 Fed. Reg. 15315 (March 25, 2003), prescribes a uniform system for classifying, safeguarding and declassifying national security information. It provides that:

A person may have access to classified information provided that:

(1) a favorable determination of eligibility for access has been made by an agency head or the agency head's designee;

(2) the person has signed an approved nondisclosure agreement; and

(3) the person has a need-to-know the information.

Exec. Order No. 13292, Sec. 4.1(a). "Need-to-know" means "a determination made by an authorized holder of classified information that a prospective recipient requires access to specific classified information in order to perform or assist in a lawful and authorized governmental function." Exec. Order No. 12958, Sec. 4.1(c). Executive Order No. 12958 further states, in part, that "Classified information shall remain under the control of the originating agency or its successor in function." Exec. Order No. 13292, Sec. 4.1(c).

21. Second, Executive Order No. 12968, 60 Fed. Reg. 40245 (Aug. 2, 1995), establishes a uniform Federal personnel security program for employees of the Federal Government, as well as employees of an industrial or commercial contractor of a Federal agency, who will be considered for initial or continued access to the classified information. The Order states, in part, that "Employees who are granted eligibility for access to classified information shall . . . protect classified information in their custody from unauthorized disclosure . . . ." Exec. Order No. 12968, Sec. 6.2(a)(1).

22. In addition, the courts have developed several doctrines that are relevant to this dispute and that establish the supremacy of federal law with respect to national security information and intelligence gathering. For example, suits alleging secret espionage agreements with the United States are not justiciable.

23. The Federal Government also has an absolute privilege to protect military and state

secrets from disclosure. Only the Federal Government can waive that privilege, which is often called the "state secrets privilege."

II. Alleged NSA Activities and the Federal Government's Invocation of the State Secrets Privilege

24. On May 11, 2006, USA Today published an article alleging that the NSA has been secretly collecting the phone call records of millions of Americans from various telecommunications carriers. The article reported on the purported activities of three of the Carrier Defendants in this case. No United States official has confirmed or denied the existence of the alleged program subject to the USA Today article. Unclassified Declaration of Keith B. Alexander ("Alexander Decl.") ¶ 8 (Exhibit A, attached to this Complaint).

25. Since January 2006, more than 30 class action lawsuits have been filed alleging that telecommunications carriers, including the Carrier Defendants, have unlawfully provided assistance to the NSA. The first lawsuit, *Hepting v. AT&T Corp., et al.*, was filed in the District Court for the Northern District of California in January 2006. Case No. C-06-0672-VRW.

26. Those lawsuits, including the *Hepting* case, generally make two sets of allegations. First, the lawsuits allege that the telecommunications carriers unlawfully intercepted the contents of certain telephone calls and emails and provided them to the NSA. Second, the lawsuits allege that telecommunications carriers have unlawfully provided the NSA with access to calling records and related information. An example of the second kind of case is *Terkel v. AT&T, et al.*, filed in the Northern District of Illinois in May 2006. Case No. C-06-2837 (MFK).

27. The Judicial Panel on Multidistrict Litigation is currently considering a motion to transfer all of these lawsuits to a single district court for pretrial proceedings. *In re: National Security Agency Telecommunications Records Litigation*, MDL Docket No. 1791 (JPML).

28. In both the *Hepting* and *Terkel* cases, the state secrets privilege has been formally asserted by the Director of National Intelligence, John D. Negroponte, and the Director of the National Security Agency, Lieutenant General Keith B. Alexander. The Director of National Intelligence is the "head of the intelligence community" of the United States. 50 U.S.C. § 403(b)(1). General Alexander has also invoked the NSA's statutory privilege. *See* 50 U.S.C. § 402 note.

29. As was the case in *Terkel*, where the United States invoked the state secrets privilege, the subpoenas at issue here seek information in an attempt to confirm or deny the existence of this alleged program subject to the USA Today article.

30. In *Terkel*, Director Negroponte concluded that "the United States can neither confirm nor deny allegations concerning intelligence activities, sources, methods, relationships, or targets" and that "[t]he harm of revealing such information should be obvious" because "[i]f the United States confirms that it is conducting a particular intelligence activity, that it is gathering information from a particular source, or that it has gathered information on a particular person, such intelligence-gathering activities would be compromised and foreign adversaries such as al Qaeda and affiliated terrorist organizations could use such information to avoid detection." *See* Unclassified Declaration of John D. Negroponte in *Terkel* ("Negroponte Decl.") ¶ 12 (Exhibit B, attached to this Complaint). Furthermore, "[e]ven confirming that a certain intelligence activity or relationship does *not* exist, either in general or with respect to specific targets or channels, would cause harm to the national security because alerting our adversaries to channels or individuals that are not under surveillance could likewise help them avoid detection." *Id.* Director Negroponte went on to explain that "if the government, for example, were to confirm in certain cases that specific intelligence activities, relationships, or targets do not exist, but then

refuse to comment (as it would have to) in a case involving an actual intelligence activity, relationship, or target, a person could easily deduce by comparing such responses that the latter case involved an actual intelligence activity, relationship, or target." *Id.* In light of the exceptionally grave damage to national security that could result from any such information, both Director Negroponte and General Alexander have explained that "[a]ny further elaboration on the public record concerning these matters would reveal information that would cause the very harms that my assertion of privilege is intended to prevent." *Id.*; *see* Alexander Decl. ¶ 7.

31. The assertion of the state secrets privilege in *Terkel* and the privilege of the National Security Agency therefore covered "any information tending to confirm or deny (a) alleged intelligence activities, such as the alleged collection by the NSA of records pertaining to a large number of telephone calls, (b) an alleged relationship between the NSA and AT&T (either in general or with respect to specific alleged intelligence activities), and (c) whether particular individuals or organizations have had records of their telephone calls disclosed to the NSA." Negroponte Decl. ¶ 11; *see* Alexander Decl. ¶¶ 7-8. In other words, the state secrets privilege covers the precise subject matter sought from the Carrier Defendants here.

III. The State Defendants Seek to Require the Production of Potentially Highly Classified and Sensitive Information

32. On June 19, 2006, and June 22, 2006, the State Defendants sent subpoenas ad testificandum and subpoenas duces tecum, respectively ("Subpoenas") to each of the Carrier Defendants. Representative copies of these subpoenas ad testificandum and subpoenas duces tecum are attached as Exhibits C and D. The testimony sought by the subpoenas ad testificandum related to, "[t]he number of Missouri customers, if any, whose calling records have been delivered or otherwise disclosed to the National Security Agency ("NSA") and whether or

not any of those customers were notified that their records would be or had been so disclosed and whether or not any of those customers consented to the disclosure;" "[t]he legal authority, if any, under which the disclosures . . . were made;" "[t]he nature or type of information disclosed to the NSA, including telephone number, subscriber name and address, social security numbers, calling patterns, calling history, billing information, credit card information, internet data, and the like;" "[t]he date or dates on which the disclosures . . . were made;" and "[t]he particular exchanges for which any number was disclosed to the NSA." *See* Exhibit C, subpoena ad testificandum, attachment A ¶¶ 1-5. In turn, the materials sought by the subpoenas duces tecum include, among other items, "[a]ny order, subpoena or directive of any court, tribunal or administrative agency or officer whatsoever, directing or demanding the release of customer proprietary information relating to Missouri customers;" and "[c]opies of all records maintained pursuant to PSC Rule 4 CSR 240-33.160(6) involving the disclosure of CPNI to a third party." *See* Exhibit D, subpoena duces tecum, attachment A, ¶¶ 1-4.

33. These Subpoenas specify that they are issued "pursuant to Sections 386.130, 386.320, 386.410, 386.420, 386.440, 386.460, and 386.480, RSMo." The cited provisions of state law provide, *inter alia*, that "commission shall have the general supervision of all telegraph corporations or telephone corporations, and telegraph and telephone lines . . . and shall have power to and shall examine the same and keep informed as to their general condition, their capitalization, their franchises and the manner in which their lines and property, owned, leased, controlled or operated are managed, conducted and operated, not only with respect to the adequacy, security and accommodation afforded by their service, but also with respect to their compliance with all the provisions of law, orders and decisions of the commission and charter and franchise requirements. RSMo. 386.320 ¶1. Furthermore, the "commission and each

commissioner shall have power to examine all books, contracts, records, documents and papers of any person or corporation subject to its supervision, and by subpoena duces tecum to compel production thereof. *Id.* ¶ 3. These provisions also provide that, "[t]he commission or any commissioner or any party may, in any investigation or hearing before the commission, cause the deposition of witnesses . . . and to that end may compel the attendance of witnesses and the production of books, waybills, documents, papers, memoranda and accounts." RSMo. 386.420 ¶ 2.

34. These Subpoenas demanded that responses be submitted by the Carrier Defendants on or before July 12, 2006. On July 11, 2006, the General Counsel for the Office of the Director of National Intelligence, Benjamin A. Powell, advised the Carrier Defendants that compliance with these subpoenas could not be accomplished without harming national security and further advised that enforcement of the subpoenas would be inconsistent with federal law. *See* Letter of July 11, 2006, from Benjamin A. Powell to Edward R. McNicholas, attached as Exhibit E. Indeed, a comprehensive body of federal law governs the field of foreign intelligence gathering and bars any unauthorized disclosures as contemplated by these subpoenas, thereby preempting state law, including: (i) Section 6 of the National Security Agency Act of 1959, Pub. L. No. 86-36, § 6, 73 Stat. 63, 64, codified at 50 U.S.C. § 402 note; (ii) section 102A(i)(1) of the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458, 118 Stat. 3638 (Dec. 17, 2004), codified at 50 U.S.C. § 403-1(i)(1); and (iii) 18 U.S.C. § 798(a).

35. The State Defendants initiated proceedings in the Circuit Court for the County of Cole on July 12, 2006 to seek to compel the Carrier Defendants to comply.

IV. The State Defendants Lack Authority to Compel Compliance with the Subpoenas.

36. The State Defendants' authority to seek or obtain the information requested in these

Subpoenas is fundamentally inconsistent with and preempted by the Federal Government's exclusive control over all foreign intelligence gathering activities. In addition, no federal law authorizes the State Defendants to obtain the information they seek.

37. The State Defendants have not been granted access to classified information related to the activities of the NSA pursuant to the requirements set out in Executive Order No. 12958 or Executive Order No. 13292.

38. The State Defendants have not been authorized to receive classified information concerning the communication intelligence activities of the United States in accordance with the terms of 18 U.S.C. § 798, or any other federal law, regulation, or order.

39. In seeking information bearing upon NSA's purported involvement with the Carrier Defendants, the Subpoenas seek disclosure of matters that the Director of National Intelligence has determined would improperly reveal intelligence sources and methods, including confirming or denying whether or to what extent such materials exist, would improperly reveal intelligence sources and methods.

40. The United States has a strong and compelling interest in preventing the disclosure of sensitive and classified information. The United States has a strong and compelling interest in preventing terrorists from learning about the methods and operations of terrorist surveillance activities being undertaken or not being undertaken by the United States.

41. As a result of the Constitution, federal laws, applicable privileges, and the United States' interest in preventing the unauthorized disclosure of sensitive or classified information, the Carrier Defendants will be unable to confirm or deny their involvement, if any, in intelligence activities of the United States, and therefore cannot provide a substantive response to the Subpoenas.

42. The United States will be irreparably harmed if the Carrier Defendants are permitted or are required to disclose sensitive and classified information to the State Defendants in response to the Subpoenas.

COUNT ONE – VIOLATION OF AND PREEMPTION UNDER THE SUPREMACY CLAUSE AND FEDERAL LAW
(ALL DEFENDANTS)

43. Plaintiff incorporates by reference paragraphs 1 through 46 above.

44. The Subpoenas, and any responses required thereto, are invalid under, and preempted by, the Supremacy Clause of the United States Constitution, Art. VI, Cl. 2, federal law, and the Federal Government's exclusive control over foreign intelligence gathering activities, national security, the conduct of foreign affairs, and the conduct of military affairs.

45. The Subpoenas, and any responses required thereto, are also invalid because the no organ of State government, such as the Missouri Public Services Commission, or its officers, may regulate or impede the operations of the federal government under the Constitution.

COUNT TWO – UNAUTHORIZED DISCLOSURE OF SENSITIVE AND CONFIDENTIAL INFORMATION
(ALL DEFENDANTS)

46. Plaintiff incorporates by reference paragraphs 1 through 48 above.

47. Providing responses to the Subpoenas would be inconsistent with and would violate federal law including, but not limited to, Executive Order 12958, 18 U.S.C. § 798, and 50 U.S.C. § 402 note, as well as other applicable federal laws, regulations, and orders.

PRAYER FOR RELIEF

WHEREFORE, the United States of America prays for the following relief:

1. That this Court enter a declaratory judgment pursuant to 28 U.S.C. § 2201(a), that the Subpoenas issued by the State Defendants may not be enforced by the State Defendants or

responded to by the Carrier Defendants because any attempt to obtain or disclose the information that is the subject of the these Subpoenas would be invalid under, preempted by, and inconsistent with the Supremacy Clause of the United States Constitution, Art. VI, Cl. 2, federal law, and the Federal Government's exclusive control over foreign intelligence gathering activities, national security, the conduct of foreign affairs, and the conduct of military affairs.

2. That this Court grant plaintiff such other and further relief as may be just and proper, including any necessary and appropriate injunctive relief.

Dated: July 25, 2006

Respectfully submitted,

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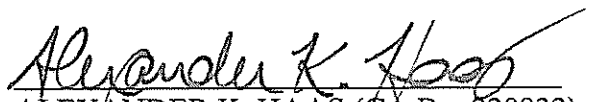

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