



August 29, 2006

Washington Utilities and Transportation Commission
P.O. Box 47250
1300 S. Evergreen Park Dr. SW
Olympia, WA 98504-7250

Docket #UT-060856
Responsive Comments by American Civil Liberties Union of Washington

Dear Chairman Sidran and Commission Members:

The American Civil Liberties Union of Washington (ACLU-WA) wishes to provide its response to the Notice issued by the Commission on August 25th. We are unable to provide even speculative answers to Questions 1 and 3, as those answers are entirely up to Verizon and AT&T. These comments are therefore limited to Question 2, inquiring whether probable cause exists to file a complaint.

The ACLU-WA does not believe we are yet at a stage where filing a formal complaint is appropriate. Very serious questions have been raised in media articles, alleging that one or more telephone companies have disclosed telephone records to the federal government without proper legal authority. The details—and even existence—of these disclosures remain quite murky; public statements by both the federal government and the telephone companies have served more to obfuscate the matter than to clarify it. As such, although it seems likely that some sort of widespread warrantless disclosure of telephone records has occurred, it remains difficult to say which telephone companies are involved, or whether there was any sort of legal authorization. We therefore believe that probable cause to file a complaint has not been established.

This does not mean the Commission should dismiss the docket. To the contrary, the need for a Commission investigation is as strong as ever, to discover the facts of telephone record disclosures. As we have previously commented, we believe that investigation should encompass all telephone companies doing business in Washington State, rather than being limited to Verizon and AT&T. Even if Verizon and AT&T refuse to meet their statutory obligations to cooperate with an investigation, there is no reason to believe that other companies will be equally intransigent. And perhaps information will come forward from these other sources that will shed light on actions by Verizon and AT&T.

The ACLU-WA therefore urges the Commission to begin an investigation by asking generalized questions of all telephone companies. Each company should

**AMERICAN CIVIL
LIBERTIES UNION OF
WASHINGTON
FOUNDATION**

705 2ND AVENUE, 3RD FL.
SEATTLE, WA 98104
T/206.624.2184
F/206.624.2190
WWW.ACLU-WA.ORG

TIMOTHY KAUFMAN-OSBORN
BOARD PRESIDENT

KATHLEEN TAYLOR
EXECUTIVE DIRECTOR

be asked whether it has been approached by governmental entities with requests for telephone records, the legal authorization (if any) provided by the governmental entity, whether or not the company disclosed any telephone records to a governmental entity, the number of instances of disclosure, and the total number of records disclosed. None of these questions risks the revelation of state secrets, and the answers should help clarify the situation—and potentially provide probable cause to file a formal complaint against one or more companies.

Sincerely,

A handwritten signature in black ink that reads "Doug Klunder". The signature is written in a cursive style with a large, prominent "D" at the beginning.

Doug Klunder
Privacy Project Director