

August 26, 2008

**NOTICE OF INTENT TO DISMISS PETITION  
AND  
NOTICE OF OPPORTUNITY TO COMMENT  
(Comments Due: Monday, September 8, 2008)**

RE: *American Civil Liberties Union of Washington Petition for Investigation,*  
Docket UT-060856

TO ALL INTERESTED PERSONS:

On May 25, 2006, the American Civil Liberties Union of Washington Foundation (ACLU) filed a petition requesting the Commission to open an investigation into whether some telephone companies released certain customer calling information to, and at the request of, the United States Government in violation of state laws or rules. After receiving written comments and hearing comments at the July 12, August 30, and September 6, 2006, open meetings, the Commission in Order 02 entered on September 27, 2006, opened an investigation but deferred further action pending final resolution of issues of federal law pending in federal courts.

The pending issues have now been resolved through a change in federal law. On July 10, 2008, the President signed into law the Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2008.<sup>1</sup> Title II of that Act added a new Section 803, which provides:

(a) In General

No State shall have authority to—

- (1) conduct an investigation into an electronic communication service provider's alleged assistance to an element of the intelligence community;
- (2) require through regulation or any other means the disclosure of information about an electronic communication service provider's alleged assistance to an element of the intelligence community;
- (3) impose any administrative sanction on an electronic communication service provider for assistance to an element of the intelligence community; or

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<sup>1</sup> See P.L. 110-261, 122 Stat. 2436 (2008).

(4) commence or maintain a civil action or other proceeding to enforce a requirement that an electronic communication service provider disclose information concerning alleged assistance to an element of the intelligence community.

(b) Suits by the United States

The United States may bring suit to enforce the provisions of this section.

(c) Jurisdiction

The district courts of the United States shall have jurisdiction over any civil action brought by the United States to enforce the provisions of this section.

(d) Application

This section shall apply to any investigation, action, or proceeding that is pending on or commenced after the date of the enactment of the FISA Amendments Act of 2008.<sup>2</sup>

Given this provision preempting state authority to investigate, begin or maintain a proceeding or seek sanctions for the violation of state laws or rules relating to the disclosure of information about an electronic communication service provider's alleged assistance to an element of the intelligence community, the Commission provides this notice of its intent to dismiss the ACLU's petition.

The Commission provides an opportunity for interested persons to submit comments concerning this notice of intent to cancel. The Commission requests that comments be provided in electronic format to enhance public access, for ease of providing comments, to reduce the need for paper copies, and to facilitate quotations from the comments. Interested persons may submit comments to the Commission **no later than 3:00 p.m. on Monday, September 8, 2008**, via the Commission's Web Portal ([www.utc.wa.gov/e-filing](http://www.utc.wa.gov/e-filing)) or by e-mail to [records@utc.wa.gov](mailto:records@utc.wa.gov). Please include:

- The docket number of this proceeding (UT-060856).
- The commenting party's name.
- The title and date of the comment or comments.

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<sup>2</sup> 50 U.S.C. § 1885b (codifying § 803 of the Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2008).

An alternative method for submitting comments is by mailing/delivering an electronic copy on a CD in .pdf Adobe Acrobat format or in .doc MSWord 97 or later. Include all the information requested above. The Commission will post on its web site all comments provided in electronic format. The web site is located at <http://www.utc.wa.gov/060856>. If you are unable to file your comments electronically or to submit them on a disk, the Commission will always accept a paper document.

Sincerely,

DAVID W. DANNER  
Executive Director and Secretary