



Cathryn L. Hazouri, Executive Director • Mark Silverstein, Legal Director

May 24, 2006

Attorney General John Suthers
1525 Sherman St., 5th floor
Denver, CO 80203
VIA FACSIMILE: 303-866-5691

Re: Colorado Public Telephone Utilities Disclosure of Coloradans'
Personal Information to the NSA in Violation of Colorado Law

Dear Attorney General Suthers:

I am writing on behalf of the ACLU of Colorado and its twelve thousand members to request an investigation into the Colorado public telephone utilities' practice of sharing Coloradans' telephone records with the National Security Agency ("NSA").

On May 11, 2006, *USA Today* reported that three phone companies, AT&T, Verizon, and BellSouth,¹ have provided the NSA with the personal calling details of customers, including telephone numbers called, times, dates, and directions of calls.² In doing so, these companies have systematically and flagrantly violated the privacy rights of their customers by sharing information that reveals Coloradans' personal associations, interests, and a host of other 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.³ According to sources in the story, these records were provided voluntarily, neither with the consent of their customers nor under the compulsion of a warrant, court order, or other legal process from the government.⁴ Using this information, the NSA or other agency accessing the database can easily determine the names and addresses associated with these calls by cross-referencing other, readily accessible databases.⁵ This information would enable the government to track every phone call made by every Colorado

¹ CPUC has authorized AT&T, BellSouth, and Verizon to provide telephone services in the State of Colorado, and has regulatory responsibility for these companies.

² Leslie Cauley, "NSA has massive database of Americans' phone calls," *USA Today* (May 11, 2006).

³ *Id.*

⁴ John Markoff, "Questions Raised for Phone Giants in Spy Data Furor," *New York Times* (May 13, 2006).

⁵ *Id.*

residential customer, including the identities of the people called and the length of each conversation.

Experts agree that there is little reason to believe that Verizon, AT&T, and BellSouth are the only companies providing this information to the NSA.⁶ Several reports suggest that there is an even broader NSA program of wiretapping that may implicate all “the leading companies” in the telecommunications industry.⁷ 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.⁸

Verizon, BellSouth and AT&T have all issued statements in recent days regarding their participation in this record-sharing program. While BellSouth has denied any participation, Verizon and AT&T have issued ambiguous statements about their and their subsidiaries’ involvement with the NSA program. Facing a firestorm on Capitol Hill, angry customers and shareholders, and billions of dollars in potential legal liability, public telephone utilities clearly have an incentive to deny participation in these programs. Furthermore, a recently issued Presidential Memorandum may give the Director of National Security the power to immunize these telecommunications companies from some liability for false statements they make in concealing matters of national security,⁹ making any denials inherently untrustworthy. These allegations are far too serious and well-founded to be dismissed without a full investigation.

Most, if not all, telecommunications companies operating in Colorado have privacy policies promising consumers that the companies will protect the consumers’ private and confidential information until and unless they have the customer’s consent or are compelled to release it by legal process. For example, Verizon represents to its customers that it will not share their personal information unless “disclosure is required by law” and that “Verizon must disclose information, as necessary, to comply with court orders or subpoenas.” AT&T’s policy states that it does not sell the personal information of its customers, and that it gives such private information to third parties only in response to “court order[s] or subpoenas,” as it “abides by the federal and or state...rules that apply to all telecommunication carriers.”

If Verizon, AT&T or any other telecommunications company was making such representations while simultaneously turning over Coloradans’ private information voluntarily to the NSA, they may have violated the Colorado Consumer Protection Act (“CCPA”), which prevents companies from knowingly

⁶ Associated Press, “Experts suspect NSA is gathering more info,” (May 12, 2006).

⁷ Eric Lichtblau and James Risen, “Spy Agency Mined Vast Data Trove, Officials Report,” *New York Times* (December 24, 2005).

⁸ Ryan Singel, “Whistle-Blower Outs NSA Spy Room,” *Wired News* (April 7, 2006).

⁹ 71 Fed. Reg. 27941

making false representations as to the characteristics or uses of services.¹⁰ Furthermore, these telecommunications companies may have purposefully failed to disclose their involvement with the NSA spying program to potential consumers, because such disclosure would clearly have discouraged many Coloradoans from purchasing services from that telecommunications company.¹¹

Pursuant to C.R.S. § 6-1-103, the Attorney General is authorized to investigate violations of the CCPA. The ACLU of Colorado, on behalf of itself and its twelve thousand members, requests that the Attorney General's office fully investigate the actions of all public telephone utilities in its jurisdiction regarding these practices, and prosecute any violations of Colorado law. The ACLU of Colorado also requests that Attorney General exercise its authority pursuant to C.R.S. § 6-1-110 to obtain a temporary restraining order, injunction or voluntary assurance of discontinuance to immediately halt any unlawful practices.

Very truly yours,

A handwritten signature in black ink, appearing to read 'T. Pendergrass', with a stylized flourish at the end.

Taylor Pendergrass
Staff Attorney

cc. Governor Bill Owens
136 State Capitol
Denver, CO 80203
VIA FACSIMILE: 303-866-2003

¹⁰ C.R.S. § 6-1-105(e).

¹¹ C.R.S. § 6-1-105(u).