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Washington, DC 20515–6115

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October 2, 2007

Mr. Edward A. Mueller
Chairman and CEO
Qwest
1801 California Street
Denver, CO 80202

Dear Mr. Mueller:

In May 2006, it was widely reported that three telephone companies, AT&T, BellSouth, and Verizon provided the National Security Agency (NSA) with access to telephone records of millions of their customers without the customer's knowledge or consent. It was also reported that although it was approached by the Government, Qwest declined to participate in the program. The Director of National Intelligence has since acknowledged the existence of this program. There have also been reports that AT&T allowed the NSA to install equipment on its network capable of examining millions of individual messages traveling over the Internet.

In March 2007, the Inspector General of the Department of Justice (DOJ) released a report concerning use by the Federal Bureau of Investigation (FBI) of National Security Letters (NSLs). Pursuant to the Foreign Intelligence Surveillance Act (FISA), the FBI may use NSLs to obtain, without court review, records from businesses, including telephone companies and Internet service providers. In reviewing the FBI's use of this authority, the DOJ Inspector General found that the FBI improperly obtained telephone billing records and subscriber information from three telephone companies. Specifically, the FBI Inspector General determined that there were more than 700 documents that were not NSLs, but rather letters stating that exigent circumstances supported the Bureau's request for records. According to the DOJ Inspector General, the use of these letters circumvented the requirements of FISA and violated DOJ guidelines and FBI policies. In addition, the DOJ Inspector General's report reveals that participating telephone companies gave the FBI more information than was sought by the letters.

Section 222 of the Communications Act of 1934 [47 U.S.C. 222] prohibits telecommunications carriers from disclosing proprietary customer information, except as required by law or with the customer's approval. There is no exception in Section 222, or in the regulations of the Federal Communications Commission implementing that section, permitting

telecommunications carriers to disclose customer records absent a court or other administrative order or customer approval for purposes of government intelligence gathering or any other similar purpose.

We are eager to understand the process by which telecommunications carriers release customer records, as well as the extent of reported efforts by government agencies to obtain information about customers, including their call records and data reflecting their Internet use. We respectfully request that you answer the following questions:

1. Please describe the typical process by which your company receives requests for customer records consistent with the FISA process and how such records are disclosed to requesting entities, including how such requests are made, what documents are required, and the timeframe in which your company typically responds.

2. The FISA process permits governmental entities to obtain records, in certain compelling or time-sensitive circumstances, prior to obtaining authorization from the FISA court. In such situations, the government must subsequently seek such authorization within 72 hours of commencing a wiretap or requesting such records. What is the process by which your company complies with such requests? What is the process by which your company assures itself that the requesting entity has subsequently fulfilled its obligation to seek FISA court authorization? How often has your company been requested to commence a wiretap or search for records without an NSL, where the entity seeking such information has subsequently received authorization?

3. Has your company been asked to produce or provide information relating to your customers without an NSL or FISA authorization? If so, please provide the date or dates such request(s) were made and the form in which such request came. Who or what entity or entities has asked your company to produce or provide information relating to your customers outside of the FISA process?

4. Did your company raise the lack of FISA process or the lack of an NSL with any entity requesting customer information? If so, what was the governmental entity's response?

5. What has been the stated legal justification provided by governmental entities for producing or providing information relating to your customers, if any? Do you agree with any stated legal justification provided to you? Did your company conduct any analysis of the legality of a request for customer information? If so, please provide that analysis.

6. Do you believe it is proper for the onus to be on a company to determine whether the government is acting within the scope of its authority when it requests customer information?

7. Specifically what information relating to your customers have you been asked to produce or provide outside of the FISA process? What information relating to your customers have you produced or provided to any governmental entities outside of the FISA process?

8. Are you currently producing or providing any information to governmental entities outside of the FISA process? If so, specifically what information relating to your customers are you producing or providing outside of the FISA process?

9. Have you at any time sought consent from your customers to produce or provide personally identifiable information to any governmental entities outside of the FISA process?

10. What safeguards did you and do you currently have in place to ensure that you do not disclose information relating to your customers in violation of 47 U.S.C. 222 or any other provision of the Communications Act?

11. Have you at any time been offered indemnification for producing or providing information relating to your customers to governmental entities, either within or outside of the FISA process? If so, who or what entity made such offer? Have you at any time been offered compensation for producing or providing information relating to your customers to governmental entities, either within or outside of the FISA process? If so, who or what entity made such offer?

12. Have you ever been asked to install or permit the installation of equipment on your network to intercept Internet traffic? Have you ever been asked to install or permit the installation of equipment on your network to send copies of Internet traffic to any third parties? If so, who asked you to install such equipment and on what dates? Have you ever installed or permitted the installation of equipment on your network to send copies of Internet traffic to any third parties?

    a. Have you at any time been presented with a subpoena or other court or administrative order directing you to install or permit the installation of such equipment? If so, what type(s) of court or administrative order did you receive? On what dates did you receive such subpoenas or other court or administrative orders?

    b. If you have ever installed or permitted the installation of equipment on your network to send copies of Internet traffic to any third parties, please identify the third parties to whom copies of Internet traffic were sent.

    c. Who asked you to install or permit the installation of such equipment? On what dates did you receive such requests? On what dates did you comply with such

requests?

d. What has been the stated legal justification provided by governmental entities for installing or permitting the installation of such equipment and producing or providing such information relating to your customers, if any? Do you agree with any stated legal justification provided to you? Did your company conduct any analysis of the legality of a request to install or permit the installation of such equipment? If so, please provide that analysis.

e. Have you at any time been offered indemnification for installing or permitting the installation of such equipment and producing or providing such information? If so, who or what entity made such offer? Have you at any time been offered compensation for producing or providing Internet traffic information relating to your customers? If so, who or what entity made such offer?

f. Are you currently producing or providing any Internet traffic information to governmental entities? If so, specifically what information relating to Internet traffic are you producing or providing?

g. Have you at any time sought consent from your customers to produce or provide this Internet traffic information?

13. On September 9, 2007, the *New York Times* reported that the FBI used NSLs to request not only the call records of particular phone company customers, but also details on those customers' "communities of interest," or the network of people with whom the customers were in contact.

    a. Have you at any time been presented with a subpoena or other court or administrative order directing you to produce or provide information about any customer's community of interest? If so, what type(s) of court or administrative order did you receive? On what dates did you receive such subpoenas or other court or administrative orders?

    b. Has your company been asked to produce or provide information relating to any customer's community of interest without an NSL or FISA authorization? If so, please provide the date or dates such request(s) were made and the form in which such request came.

    c. What has been the stated legal justification provided by governmental entities for producing or providing such information relating to your customers' communities of interest, if any? Do you agree with any stated legal justification provided to you? Did your company conduct any analysis of the legality of a request for information about your customers' communities of interest? If so, please provide that analysis.

d. Specifically what information relating to your customers' communities of interest have you been asked to produce or provide? What information relating to your customers' communities of interest have you produced or provided to any governmental entities?

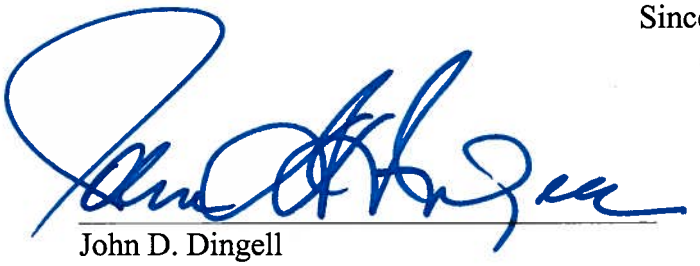
e. Have you at any time been offered indemnification for producing or providing information about your customers' communities of interest? If so, who or what entity made such offer? Have you at any time been offered compensation for producing or providing information about your customers' communities of interest? If so, who or what entity made such offer?

f. Are you currently producing or providing any information to governmental entities concerning your customers' communities of interest? If so, specifically what information relating to your customers' communities of interest are you producing or providing?

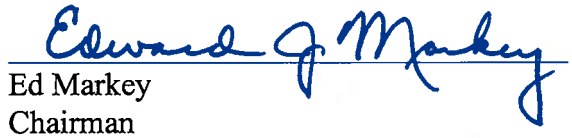
g. Have you at any time sought consent from your customers to produce or provide information about their communities of interest?

Please provide your responses to these questions by no later than Friday, October 12, 2007. If you have any questions regarding this matter, please contact us or have your staff contact Amy Levine, Mark Seifert, or Colin Crowell with the Committee staff at (202) 226-2424.

Sincerely,



John D. Dingell
Chairman



Ed Markey
Chairman
Subcommittee on Telecommunications and the Internet

Bart Stupak
Chairman
Subcommittee on Oversight and Investigations

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Fred Upton, Ranking Member
Subcommittee on Telecommunications and the Internet

The Honorable Ed Whitfield, Ranking Member
Subcommittee on Oversight and Investigations