

2nd UPDATE: Fate Unclear For Telecom Wiretap Immunity Bill

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(Adds response from Sen. Obama)

By **John Godfrey**

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WASHINGTON (Dow Jones)--The fate of U.S. Senate legislation giving telephone companies immunity for their role in President George W. Bush's warrantless eavesdropping program remains unclear.

While the provision was approved by the Senate Intelligence Committee Thursday night, it now must be approved by the Senate Judiciary Committee where committee Chairman Patrick Leahy, D-Vt., has expressed reservations about such liability protection.

And at least one Democratic presidential hopeful, Sen. Chris Dodd, D-Conn., has latched on to the issue and is vowing to do whatever he can to prevent it from becoming law.

Senate Intelligence Committee Chairman John Rockefeller, D-W.Va., defended the provision.

"We...recognize that private companies who received legal assurances from the highest levels of government should not be dragged through the courts for their help with national security," Rockefeller said in a statement released by the committee. "The onus is on the administration, not the companies, to ensure that the request is on strong legal footing, and if it is not, it is the administration that should be held accountable."

The immunity was provided as part of a broader wiretapping bill considered in a closed-door meeting that began Thursday afternoon.

Large phone companies, such as AT&T Inc. (T) and Verizon Communications Inc. (VZ), have refused to say publicly whether they cooperated with the Bush administration's warrantless eavesdropping program. They are, however, snarled in a several class action lawsuits for allegedly handing over millions of customer records in violation of federal privacy laws.

It has been reported that Qwest Communications International Inc. (Q) was asked to participate in the program, but, citing concerns about its legality, refused. The company has always refused to comment on the matter.

Thursday's bill would give telephone companies immunity for participating in the warrantless surveillance program from Sept. 11, 2001, until it was placed under Foreign Intelligence Surveillance Act, or FISA, court authorization in January 2007. The bill requires certification to the court that the wiretapping was done at the request of the U.S. attorney general or an intelligence agency and was part of a lawful program authorized by the president.

The bill does not provide retrospective immunity for government officials, nor to companies outside the specified timeframe.

The decision to grant the telephone companies immunity appears to have hinged upon the recent release of documents by the White House to the Intelligence Committee about the wiretapping program.

According to a description of the provision by the committee, "it is clear participation was based on what they believe to be lawful requests made by the government."

Some Democrats on the committee who have reviewed those documents were still opposed to the idea of granting immunity prior to the committee's work.

Intelligence Committee member Sen. Bill Nelson, D-Fla., tried unsuccessfully to strip the immunity provision from the bill during Thursday's markup session. An amendment to that failed on an 12-to-3 vote, with Nelson being joined by Sens. Ron Wyden, D-Oregon, and Russel Feingold, D-Wis.

"We received critical documents only 48 hours before the vote," Nelson said Friday. "We need more time ... before deciding the question of immunity."

Leahy, House Speaker Steny Hoyer, D-Md., House Judiciary Committee Chairman John Conyers, D-Mich., have all said that until the White House discloses information about the program, they cannot consider immunity. The documents given the Intelligence Committee were not provided to other lawmakers.

"Until we have that information, it seems to me that issue is going to be unresolved," Hoyer has said.

Democratic presidential hopeful Sen. Chris Dodd, D-Conn., has already said he plans to put a "hold" on the bill if it comes to the Senate floor with an immunity provision included.

A "hold" is an informal, though long-established way for a senator to block progress on legislation in the Senate. The tradition effectively allows senators to maintain their right to filibuster a bill, while still also attending to constituent needs, committee work, and political fundraising.

"I said that I would do everything I could to stop this bill from passing, and I have," Dodd said Thursday afternoon.

Sen. Joseph Biden, D-Del., also a Democratic presidential candidate, has come out in opposition to the provision too.

Other Democratic presidential candidates, particularly Sen. Barack Obama, D-Ill., have come under pressure from bloggers to oppose the provision.

"If anyone from the Obama campaign is paying attention, this should serve as a wake-up call," blogger Greg Saunders wrote on Huffingtonpost.com. "A representative cross section of the liberal blogosphere no longer thinks Barack Obama is willing to stand up to the Bush Administration."

Thursday night, Obama, in a statement released by his campaign, said Congress needs to better oversee the Bush administration's wiretapping program. "This proposal -- with an unprecedented grant of retroactive immunity -- is not the place to start," Obama said.

The campaign and Senate offices for Democratic presidential frontrunner Sen. Hillary Clinton, D-N.Y., have refused to comment.

The telephone companies argue that the program's legality wasn't theirs to determine. They say that the dispute is between Congress and the White House and that they shouldn't get caught in the crossfire.

Public interest groups argue that federal law specifically requires telephone companies to ascertain the legality of a request.

If the phone companies participated in an illegal wiretap scheme, they broke the law, too, the American Civil Liberties Union and Electronic Frontier Foundation have argued in legal briefs in pending lawsuits.

Also, court filings released last week call into question the argument that the phone companies decided to join the wiretap program as part of a nationwide security blitz in the wake of the Sept. 11, 2001, terrorist attacks.

Those documents, filed in the insider-trading trial of former Qwest CEO Joseph Nacchio, appear to allege that the Bush administration began asking companies to join the program in late 2000 or early 2001.

Lawmakers asked about the allegations said they had no information to indicate the program had begun before Sept. 12, 2001, but couldn't or wouldn't say they had information to indicate that it hadn't.

-By John Godfrey, Dow Jones Newswires; 202-862-6601; John.Godfrey@dowjones.com

(Corey Boles contributed to this article) [19-10-07 2001GMT]