

Carl J. Mayer (CM-6589)
58 Battle Road
Princeton, New Jersey 08540
609-921-0253

Bruce I. Afran (BA-8583)
10 Braeburn Drive
Princeton, New Jersey 08540
609-924-2075

Attorneys Pro Se and for Class Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CARL J.MAYER and BRUCE I. AFRAN,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

INDEX NO.:

v.

VERIZON COMMUNICATIONS INC.,
NATIONAL SECURITY AGENCY and
GEORGE W. BUSH,

Complaint

Defendants.

Plaintiffs CARL J. MAYER and BRUCE I. AFRAN, individually and on behalf of all others similarly situated, as and for their complaint against defendants assert as follows:

1. Plaintiffs are citizens of New Jersey and are telephone subscribers of defendant carrier Verizon Communications Inc. (Verizon).

2. Defendant Verizon, is a telephone carrier regulated by the Telecommunications Act of 1934 and related statutes and regulations, incorporated under the laws of the State of Delaware.

3. Defendant National Security Agency (NSA) is a division and instrumentality of the United States charged by statute with foreign intelligence gathering within the geographical territory of the United States.

4. Defendant George W. Bush is the President of the United States and signed into force the executive order under which defendant NSA has purported to operate an intelligence gathering program directed at Verizon and two other telephone carriers, Bell South and ATT.

5. Jurisdiction is based upon a question or controversy arising under the Constitution and laws of the United States pursuant to 28 U.S.C. 1331.

6. Venue is properly within the Southern District of New York in that defendant carrier Verizon is headquartered in and conducts business within this jurisdiction and that Defendants NSA and George W. Bush have gathered intelligence against telephone subscribers in this jurisdiction and that plaintiffs routinely and regularly place telephone calls within this jurisdiction.

Factual Background

7. On or about May 11, 2006 it was disclosed and acknowledged by the United States that the NSA acting purportedly under an executive order signed by President Bush has engaged in a continuing program of intelligence gathering directed against all U.S. telephone subscribers of Verizon, Bell South and ATT.

8. Launched shortly after September 11, 2001, the program consists of recording all data associated with telephone calls placed by subscribers within or without the United States and maintaining such data in a data based controlled by the NSA.

9. Said information is provided by defendant carriers under contract with the NSA for the purpose of enabling the NSA to create a data base consisting of the telephone calling histories of all subscribers in the United States allegedly for the purpose of monitoring terrorist networks and their telephone calling patterns.

10. Since on or about September 11, 2001 such information has been gathered by the NSA for all of defendant Verizon's subscribers in the United States.

11. No warrants have been issued for the disclosure of such information, no suspicion of terrorist activity or other criminal activity has been alleged against the subscribers and no probable cause has been demonstrated by the United States against any of said subscribers.

12. Upon information and belief, Verizon has been paid by the NSA for its services in disclosing this information.

13. The program of intelligence gathering against U.S. telephone subscribers is without warrant, without consent of the subscribers and without the benefit of statutory authorization. Until its disclosure on May 11, 2006 said program was without knowledge of the subscribers.

14. The intelligence gathering program has been maintained, administered and carried out without regard to actual allegations of criminal conduct against subscribers; no basis in law exists for the NSA's program.

15. Of the four major telecommunications carriers in the United States, only Qwest has refused to cooperate in the government's intelligence gathering program.

16. Qwest was approached by the NSA to participate in said program but refused in the absence of either warrants issued by a court under the Foreign Intelligence

Surveillance Act, FISA, or an opinion of the Attorney General holding that such program was lawful.

17. Because the NSA refused to obtain warrants or an opinion letter approving said program, Qwest refused to participate and has not disclosed the telephone history information of its subscribers under said program.

As and for a First Cause of Action.

18. All information set forth above is repeated below.

19. The intelligence gathering program violates the Fourth Amendment to the Constitution of the United States and Section 222 of the Telecommunications Act of 1934 as recodified as 18 U.S.C. 2702, in that Verizon has disclosed confidential information belonging to subscribers without warrant or consent or knowledge of said subscribers.

20. Accordingly, the intelligence gathering program violates the protected rights of subscribers.

21. Wherefore, plaintiffs seek injunctive relief prohibiting defendant carrier, the NSA, President Bush and other instrumentalities or officers of the United States from maintaining, administering or carrying out in any form the intelligence gathering program, along with attorneys fees, costs of suit and such other relief as to the Court may seem just and proper.

As and for a Second Cause of Action

22. All information set forth above is repeated below.

23. The United States, the NSA, President Bush and the defendant carrier have acted in concert with and in a conspiracy to violate the statutory and constitutional rights of the telephone subscribers, including plaintiffs and all others similarly situated.

24. Said intelligence gathering program violates the protected rights of the telephone subscribers under the Fourth Amendment to the Constitution of the United States which provides protection against warrantless searches and seizures and under the First Amendment which guarantees and gives rise to an expectation of privacy in the making of and in the records pertaining to private telephone communications.

25. Said intelligence gathering program violates the protected rights of the telephone subscribers under other provisions of the Constitution of the United States as articulated generally in *Griswold v. Connecticut* and subsequent judicial pronouncements which provide broad protection of the right to privacy.

26. Such intelligence gathering program at minimum requires a warrant issued by the Foreign Intelligence Surveillance Court as authorized under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. §§1801, et seq.).

27. Said intelligence gathering program violates the statutory rights of the telephone subscribers, including plaintiffs and all others similarly situated, under the Telecommunications Act of 1934 and related statutes and regulations.

28. Disclosure of the telephone subscribers' information is prohibited under 18 U.S.C. 2702, formerly Section 222 of the Telecommunications Act of 1934, and under the Constitution of the United States.

29. As provided in 18 U.S.C. 2707, in the absence of a warrant or consent of the subscriber,

(3) a provider of remote computing service or electronic communication service to the public shall not knowingly divulge a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by paragraph (1) or (2)) to any governmental entity. 18 U.S.C. 2707.

30. Based on the foregoing, plaintiffs on behalf of themselves and all others similarly situated, seek monetary damages from all defendants, particularly including defendant NSA as an instrumentality of the United States and defendant carrier Verizon in the minimal amount of \$1000.00 (One Thousand Dollars) per violation as set forth in 18 U.S.C. 2707.

31. Inasmuch as defendant carrier offers subscription to approximately 50 million subscribers, plaintiffs on behalf of said class seek damages individually and in the minimal collective amount of \$5,000,000,000 (Five Billion Dollars) for said class and damages equal to all profits earned by said defendant carrier in connection with the intelligence gathering program.

As and for a Third Cause of Action

32. All information set forth above is repeated below.

33. Based on the aforesaid violations of the Constitution and the Telecommunications Act of 1934 and related statutes and regulations, plaintiffs on behalf of themselves and all others similarly situated seek non-liquidated monetary damages.

WHEREFORE, plaintiffs seek relief and damages as follows;

1. A declaratory judgment and injunction prohibiting Verizon, the NSA or any other instrumentality or officer of the United States from gathering and or maintaining the records of Verizon's telephone subscribers

Respectfully submitted,

Bruce I. Afran (BA-8583)
10 Braeburn Drive
Princeton, New Jersey 08540
609-924-2075

Carl J. Mayer (CM-)
58 Battle Road
Princeton, New Jersey 08540
609-924-2075