



Privacy advocates: Verizon not alone giving feds records

By: Charles Wilbanks – June 6, 2013

(MoneyWatch) On a modestly positive day for many stocks on Wall Street, Verizon (VZ) shares rose nearly 3.5 percent. Investors, it seems, are betting that a report of what could be the biggest government telephone surveillance operation in history won't result in any downside for the telecom giant.

They may be right. The National Security Agency program, gathering phone records of millions of customers, was authorized by a secret court, the Foreign Intelligence Surveillance Court. That would appear to give Verizon immunity from any legal challenges.

A bigger question is whether Verizon was acting alone in working with the federal government in collecting confidential customer information or whether other telecommunications firms may be engaging in similar activities, say privacy advocates.

"There is no indication that this order to Verizon was unique or novel," said Cindy Cohn, the general counsel and legal director for the Electronic Frontier Foundation, an advocacy group that has launched scores of lawsuits against the government over its surveillance policies. "It is likely that orders like this exist for every major American telecommunication company, meaning that if you make calls in the United States, the NSA has those records. And this has been going on for at least seven years, and probably longer. We have been suing over this surveillance since 2006."

Cohn noted that the government has granted retroactive legal immunity to telecoms in these cases. Among other legal challenges, that bars a customer of a phone company from suing the firm over any alleged privacy breach.

Several lawmakers rushed to defend the surveillance, including Sen. Diane Feinstein, D-Calif., chairman of the Senate Intelligence Committee, and Mike Rogers, R-Mich., who heads the intelligence panel in the House. So did Vice President Joe Biden and Senate Majority Leader Harry Reid, D-Nev., who told reporters to "calm down," noting that the program had been going

on for several years. Rogers said the domestic spying had already prevented a terrorist attack. He did not give details.

Other legislators, such as Sens. Rand Paul, R-Kentucky, Ron Wyden, D-Ore., and Rep. James Sensenbrenner, R-Wisc., decried the program. Sensenbrenner called it "un-American."

The story was broken by American journalist Glenn Greenwald, who writes for The Guardian, a London-based newspaper. Greenwald himself is a constitutional lawyer and advocacy of privacy rights.

Even among the community of activists and lawyers who have challenged government surveillance, the scope of Thursday's revelations was startling.

"I was surprised," said Marc Rotenberg, executive director of the Electronic Privacy Information Center and a leading privacy advocate. He called the order unprecedented and unlawful.

"We don't think the court has authority to tell Verizon to turn over phone records of customers without any ties to a foreign intelligence investigation. Telecom companies have a fiduciary obligation to customers to protect their interests."

"Today the phone companies feel a little bit of an obligation to stand up and push back, but it it's not very strong," he added. "I can't imagine what has been going at the offices of Verizon and other telecom firms that seem to be OK with turning over customer information."

For its part, Verizon felt no compunction to issue a statement to the public. Rather, Verizon executive vice president Randy Milch sent a memo to employees that did not confirm the program or the order, but said it must comply with such the court's request.

Other defenders of the surveillance program noted that the Verizon phone records the NSA was collecting were what is known as "meta-data," a hazy term that in this case suggests it is only phone numbers that are captured, not the conversations themselves.

Julian Sanchez, a research fellow who specializes in technology and privacy issues at the libertarian Cato Institute in Washington, said such a distinction betrays a shallow understanding of the processes at work.

"Anyone who says that clearly doesn't know what they're talking about," he said. "Meta-data can be more revealing than the contents of the conversations themselves." He cited the administration's recent seizure of phone records in a case involving The Associated Press regarding a story reporters were working on about Al Qaeda. In that case, it was less important to know the exact content of phone conversations than which officials had been talking to reporters.

Sanchez also predicted the Verizon story may not be fully revealed yet, arguing that other major telecoms also provided the government with data about customers' Internet usage.

"The other obvious big problem is that once this data is acquired, it's not just phone information but likely Internet records, too, including what websites people read. That obviously can be used in any number of ways -- sexual orientation, reading habits, political preferences. That's why you want particularity."

Sanchez as well as Cohn, of the Electronic Frontier Foundation, said one possible side effect from the news of domestic spying could be a new national dialogue. "The last time we had revelations about Americans spying on Americans resulted in the Church Committee," Cohn said, referring to the 1975 Senate panel headed by Idaho Democrat Frank Church that grew out of revelations of spying on U.S. citizens by the CIA, NSA and others. That resulted in laws meant to strictly monitor domestic surveillance.

In testimony to members of a House committee last month, Rotenberg laid out the reasons that federal phone surveillance is a big deal. Such spying, he said "can have a severe chilling effect on protected speech and public activity.

"Individuals who are not reasonably certain that their communications will be private and confidential could be forced to censor themselves to protect sources and clients. This broad chilling effect is an injury in and of itself, regardless of the specific unlawful interception of private communications."

William Binney, a former NSA official, told news program Democracy Now on Thursday that since the Sept. 11 attacks the agency has collected an estimated 3 billion phone records a day on U.S. citizens. "Over time, that's a little over 12 trillion in their databases since 9/11, and that's just phones -- that doesn't count emails. They're avoiding talking about emails there because that's also collecting content of what people are saying. And that's in the databases that NSA has and that the FBI taps into."