

FCC Chief Says Won't Probe NSA Call Program

By Jeremy Pelofsky

Reuters

May 24, 2006

WASHINGTON - The Federal Communications Commission will not pursue complaints about a U.S. spy agency's access to millions of telephone records because it cannot obtain classified material, the FCC chairman said in a letter released on Tuesday.

Rep. Edward Markey, a Massachusetts Democrat, had asked communications regulators to investigate a newspaper report that AT&T Inc., Verizon Communications and BellSouth Corp. gave access to and turned over call records to help the National Security Agency fight terrorists.

"The classified nature of the NSA's activities makes us unable to investigate the alleged violations," FCC Chairman Kevin Martin, a Republican, said in the May 22 letter released by Markey.

Verizon and BellSouth denied turning over telephone call records to the NSA. BellSouth demanded USA Today retract claims in its story.

"We can't have a situation where the FCC, charged with enforcing the law, won't even begin an investigation of apparent violations of the law because it predicts the administration will

roadblock any investigations citing national security," Markey said in response.

The five-member FCC oversees and regulates U.S. telecommunications. While technically independent, the commissioners are appointed by the president with no more than three from the political party controlling the White House.

The 1934 Communications Act requires telecommunications carriers to protect the confidentiality of certain consumer call information, "except as required by law" or when the customer approves its release. Violators can be fined.

Another Democrat on Tuesday said in a letter to AT&T that she understood the company may have received from the Director of National Intelligence (DNI) a waiver to avoid keeping records and from liability for actions it may be taking. She did not elaborate

"I would like more information on the Internet and phone records AT&T may have provided to the NSA and the access AT&T has provided the NSA to its telecommunications network, if any," Rep. Jan Schakowsky of Illinois said in the letter.

On May 5, President George W. Bush delegated to the DNI the authority to waive liability for national security matters if they are done in cooperation with the head of an agency or department, according to a notice in the Federal Register.

Spokesmen for the DNI and AT&T declined to comment.

Bush has refused to confirm or deny the report in USA Today but said intelligence activities he authorized were legal and the government was not probing Americans' personal lives or eavesdropping on domestic calls without court approval.

AT&T was sued by the privacy rights group Electronic Frontier Foundation for violating customer privacy by turning over telephone data to the government. The Justice Department

asked that the case be dismissed, saying it could reveal military and state secrets.

The FCC's Martin said the government's arguments in that case would prevent the FCC from conducting an investigation.

Such a probe would require access to "highly sensitive classified information" and the "commission has no power to order the production of classified information," Martin said.

He said the National Security Act of 1959 prevented the disclosure of the NSA's activities.