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**ATTACHMENT 1**



**State of Vermont**  
**Department of Public Service**  
112 State Street  
Drawer 20  
Montpelier, VT 05620-2601  
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August 8, 2008

Mrs. Susan M. Hudson, Clerk  
Vermont Public Service Board  
112 State Street - Drawer 20  
Montpelier, VT 05620-2701

Re: Docket No. 7193, DPS comments

Dear Mrs. Hudson:

On July 18, 2008 the Public Service Board issued a procedural order in the above-referenced Docket. The order was prompted by recent amendments to the Foreign Intelligence Surveillance Act of 1978 (FISA) which significantly restricted the permissible scope of the proceeding.<sup>1</sup> Given the impact of the recent amendments, the Board requested comments from the parties on how to proceed with the Docket and with any pending motions.<sup>2</sup>

The Department has reviewed the recent FISA amendments as well as the various discovery responses received from AT&T to date and has reluctantly concluded that the amendments passed by Congress and signed into law by President Bush appear to preclude further investigation into the activities which initially gave rise to this proceeding. It appears from AT&T's earlier discovery responses that all of its non-security related disclosures of customer information were likely compliant with Vermont laws and regulations governing such disclosures. AT&T's reading of the Board's scoping order in this Docket resulted in the company producing information on all non-security related disclosures of consumer information, meaning that any additional disclosures that the Department did not receive information about are security related and thus likely covered by the preemption provisions of the FISA amendments. Accordingly, the Department does not believe there is currently any basis for continuing to investigate past AT&T disclosures in this matter.

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<sup>1</sup> Order of 7/18/08 at 2.

<sup>2</sup> *Id.*



However, when the Department initially sought information from AT&T pursuant to its authority under 30 V.S.A. § 206, AT&T refused to answer any of the Department's inquiries, even though many were not at the time, nor are they now, implicated by security concerns or the amendments to FISA. This fact is amply demonstrated by the company's ultimate response dated October 2, 2006 in which it responded to many of the requests and objected specifically to only a limited number based on security concerns. The information requests were dated May 17, 2006 and sought responses by May 25, 2006. AT&T refused to respond, even to the non-security related requests, until required to do so by the Board in an order dated September 21, 2006. The Department views the company's refusal to respond to the non-security related requests made under its section 206 authority as an ongoing violation from May 25, 2006 until October 2, 2006, the date of the responses finally provided as a result of the Board's order.

The Department views AT&T's ongoing refusal to provide responses to those non-security related requests until ordered to do so by the Board as a serious matter. Responsiveness to section 206 requests is crucial to the ability of the Department to do its job on behalf of Vermont's ratepayers. If all companies were to act as AT&T did in this matter, the DPS would be required to petition the Board every time it issued section 206 requests, resulting in a substantial waste of Board and Department resources and significant delays in the Department's ability to assess whether or not companies are acting in compliance with Vermont law.

Therefore, the Department recommends that the Board fine AT&T pursuant to its authority under 30 V.S.A. §§ 30(a)(2) and (b) in the amount of \$13,000 (\$100 x 130 days). The Department believes a fine under subsection (b) is warranted because a company's refusal to answer legitimate inquiries under section 206 results in substantial harm to the interests of utility customers because it obstructs the ability of the DPS to perform its statutory duties on behalf of those same customers. If the Board believes that imposing fines under subsection (b) is not warranted, then the Department recommends imposing a fine in the amount of \$10,000, the maximum amount allowed under subsection (a)(2).

Lastly, the Department notes that the FISA amendments are the subject of a number of legal challenges. Therefore, whatever disposition the Board decides is appropriate for this proceeding, the Department recommends that it be undertaken without prejudice to the ability of the Department or any other complaining party to refile should the legal landscape change in the future.

Sincerely,

  
John Cotter, Special Counsel

cc: Attached Service List



State of Vermont  
Department of Public Service  
112 State Street  
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Montpelier, VT 05620-2601  
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August 8, 2008

Mrs. Susan M. Hudson, Clerk  
Vermont Public Service Board  
112 State Street - Drawer 20  
Montpelier, VT 05620-2701

Re: Docket No. 7192, DPS comments

Dear Mrs. Hudson:

On July 18, 2008 the Public Service Board issued a procedural order in the above-referenced Docket. The order was prompted by recent amendments to the Foreign Intelligence Surveillance Act of 1978 (FISA) which significantly restricted the permissible scope of the proceeding.<sup>1</sup> Given the impact of the recent amendments, the Board requested comments from the parties on how to proceed with the Docket and with any pending motions.<sup>2</sup>

The Department has reviewed the recent FISA amendments as well as the various discovery responses received from Verizon to date and has reluctantly concluded that the amendments passed by Congress and signed into law by President Bush appear to preclude further investigation into the activities which initially gave rise to this proceeding. It appears from Verizon's earlier discovery responses that all of its non-security related disclosures of customer information were likely compliant with Vermont laws and regulations governing such disclosures. Verizon's reading of the Board's scoping order in this Docket resulted in the company producing information on all non-security related disclosures of consumer information, meaning that any additional disclosures that the Department did not receive information about are security related and thus likely covered by the preemption provisions of the FISA amendments. Accordingly, the Department does not believe there is currently any basis for continuing this matter.

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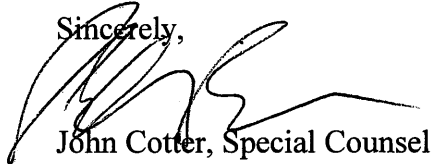
<sup>1</sup> Order of 7/18/08 at 2.

<sup>2</sup> *Id.*



However, the Department notes that the FISA amendments are the subject of a number of legal challenges. Therefore, whatever disposition the Board decides is appropriate for this proceeding, the Department recommends that it be undertaken without prejudice to the ability of the Department or any other complaining party to refile should the legal landscape change in the future.

Sincerely,

A handwritten signature in black ink, appearing to be 'John Cotter', written over the typed name.

John Cotter, Special Counsel

cc: Attached Service List