

Senate caves, votes to give telecoms retroactive immunity

By [Ryan Paul](#) | Last updated February 12, 2008 4:13 PM

An amendment that would have removed controversial telecom immunity grants from an eavesdropping bill failed to pass in the Senate today, receiving only 31 votes. The full bill—which will be put to a vote in the Senate later today—is intended to replace the Protect America Act, a temporary measure that will soon expire. The House version of the bill does not contain the immunity provision.

The Protect America Act permits the executive branch and some of its direct subordinates to authorize surveillance and interception of communications without warrants between those "reasonably believed" to be outside of the United States. The act was put in place shortly after a classified ruling from the Foreign Intelligence Surveillance Court reportedly imposed limitations on the government's warrantless eavesdropping activities. The Protect America Act, which came with a six-month sunset provision, was established so that the federal government could continue its investigatory activities while Congress crafted a more permanent legal framework.

Efforts to create consensus on an appropriate replacement for the Protect America Act have been thwarted by controversy over whether or not the telecommunications companies that cooperated with the government in warrantless surveillance should be granted retroactive immunity for engaging in potentially illegal activity. Critics of the program contend that the telecommunications companies violated laws that prohibit disclosure of user telecommunications service records without warrants.

Democrat senator Chris Dodd threatened to launch a filibuster to block surveillance legislation that includes retroactive immunity grants. Several other prominent Democrats followed Dodd's lead and joined in calling for the telecoms to be held accountable for potentially unlawful activities. The Bush administration threatened to veto any legislation that didn't grant retroactive immunity, arguing that the telecommunications companies should not be punished for cooperating with the government in good faith.

The 67 to 31 vote against the amendment today indicates that Senate Democrats lack sufficient numbers to carry out a filibuster, which means that the new spy bill will likely be passed with the telecom immunity provision intact. CBS [notes](#) that Democrat presidential candidate Barack Obama voted in favor of the amendment to remove immunity, but candidate Hillary Clinton didn't show up for the vote. Republican presidential candidate John McCain voted against the amendment.

Civil liberties advocates have responded with disappointment. "Instead of having faith in the U.S. court system to fairly handle these cases; the U.S. Senate is poised to give the telecom providers a get-out-of-jail-free card," said Caroline Fredrickson, director of the ACLU Washington Legislative Office in a statement. "The ACLU urges Senators to stand strong on immunity and not let the telecoms off the hook. Everyone deserves their day in court against companies that may have wronged them."

If the bill is passed in its current form, it would effectively put an end to lawsuits against the telecom companies that are pending within the court system and ensure that the extent of their involvement never receives legal scrutiny outside of the secret Foreign Intelligence Surveillance Court, which has declined to reveal to the public the details of its determinations about the legality of the government's eavesdropping program.

Further reading

- CNET News: [Senate shields phone companies from spy lawsuits](#)
- *Washington Post*: [Senate Protects Telecom Immunity in Spy Bill](#)
- Found via The Swamp: [FISA bill poised to pass Senate](#)