

Verizon says phone record disclosure is protected free speech

By [Nate Anderson](#) | Last updated May 7, 2007 2:48 PM

Verizon is one of the phone companies currently being sued over its alleged disclosure of customer phone records to the NSA. In a response to the court last week, the company asked for the entire consolidated case against it to be thrown out —on free speech grounds.

The response also alleges that the case should be thrown out because even looking into the issue could violate state secrets, of course, but a much longer section of the response tries to make the case that Verizon has a First Amendment right to "petition" the government. "Based on plaintiffs' own allegations, defendants' right to communicate such information to the government is fully protected by the Free Speech and Petition Clauses of the First Amendment," argue Verizon's lawyers.

Essentially, the argument is that turning over truthful information to the government is free speech, and the EFF and ACLU can't do anything about it. In fact, Verizon basically argues that the entire lawsuit is a giant SLAPP (Strategic Lawsuit Against Public Participation) suit, and that the case is an attempt to deter the company from exercising its First Amendment right to turn over customer calling information to government security services.

"Communicating facts to the government is protected petitioning activity," says the response, even when the communication of those facts would normally be illegal or would violate a company's owner promises to its customers. Verizon argues that, if the EFF and other groups have concerns about customer call records, the only proper remedy "is to impose restrictions on the government, not on the speaker's right to communicate."

With all of the phone company cases consolidated into one master case, Verizon is hoping to have the case thrown out on free-speech grounds, putting an end to its legal troubles over the issue. Should it fail, the Bush administration is already preparing to ask Congress for retroactive immunity for all telecommunications companies that assisted the government after September 11, 2001. The government is also fighting hard in court on behalf of the phone companies, filing repeated briefs which claim that "state secrets" trump even the legality of the alleged security programs.

Further reading:

- *Wired* has additional coverage of the free speech claims in Verizon's filing