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[U.S. moves to quash privacy suit against AT&T](#)

- Bob Egelko, Chronicle Staff Writer
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The Bush administration said Friday that it will ask a federal judge to dismiss a privacy rights group's lawsuit against AT&T over the company's reported role in a government surveillance program, because the case might expose state secrets.

In a filing in U.S. District Court in San Francisco, Justice Department lawyers said the government will assert the "military and state secrets privilege ... to protect against the unauthorized disclosure in litigation of information that may harm national security."

The information is so sensitive that the entire subject matter of the case is a state secret, government lawyers said.

The suit was filed by the Electronic Frontier Foundation in January on behalf of AT&T customers. It accuses the telecommunications company of giving the National Security Agency access to its voice and data network and its databases of records of customers' calls and e-mails to help the agency's recently disclosed surveillance program.

President Bush has said that shortly after the terrorist attacks of Sept. 11, 2001, he authorized the agency to intercept phone calls and e-mails between U.S. residents and terror suspects abroad without court approval. A 1978 law, the Foreign Intelligence Surveillance Act, requires the government to obtain a warrant from a court in a secret session for such surveillance, but Bush maintains he has the constitutional authority to override the law.

The lawsuit says AT&T has allowed the federal agency to sift electronically through all its messages to find targets for interception.

"It appears the NSA is capable of conducting what amounts to vacuum-cleaner surveillance of all the data crossing the Internet, whether that be people's e-mail, Web surfing or other data," Mark Klein, a former AT&T technician, said in a statement released by his lawyers.

He said the federal agency installed a device at the company's San Francisco office in 2003 capable of scanning huge amounts of data to locate specific targets.

Company documents obtained by Klein to back up his assertions have been filed under seal. Chief U.S. District Judge Vaughn Walker is scheduled to hear arguments May 17 on a request by AT&T to keep the documents confidential on the grounds that they contain trade secrets.

Kurt Opsahl, a lawyer with the Electronic Frontier Foundation, said Walker should reject the government's request to dismiss the suit.

"The state secret privilege should not be used to protect an illegal program from judicial scrutiny," Opsahl said.

Justice Department lawyers did not specify how the case would endanger national security. But they but cited rulings by the U.S. Supreme Court in 1953 and the Ninth U.S. Circuit Court of Appeals in 1998



affirming the government's authority to keep military secrets out of court, even if that meant dismissing an entire lawsuit.

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