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The War on Telephone Privacy

by Jacob G. Hornberger

A perfect example of the integrated threat that U.S. foreign policy and federal domestic regulations pose to the freedom, privacy, and well-being of the American people is the current telecommunications controversy.

Soon after the 9/11 attacks, the feds approached various U.S. telephone companies and asked them to illegally share private information about their customers. The argument, of course, was “national security” and the “war on terror,” the magic words that have come to justify all sorts of federal wrongdoing since 9/11 (e.g., torture, the invasion of Iraq, cancellation of habeas corpus, indefinite incarceration, and denial of due process).

In a lawsuit filed in U.S. District Court, the plaintiffs are alleging that some of the telephone companies agreed to cooperate with the feds, illegally and secretly sharing their customers’ private information with them. If the allegations are true, the obvious question arises, Why would these companies choose to become secret informers for the feds rather than fight to protect the rights and interests of their customers?

One possibility, of course, is that they fell for all the “national security, war on terror” nonsense, just as many other Americans did, failing to recognize that such nonsense has always been the time-honored way that governments seduce people into giving up their rights and freedoms for the pretense of security.

But there is another possibility, as former Qwest CEO Joe Nacchio can attest. Unlike the other telephone-company CEOs, Nacchio refused to play ball with the feds, deciding, correctly, that the federal request was illegal and deciding, correctly, that he had a duty to protect the privacy of his customers.

What was Nacchio’s reward for such heroic action? The feds indicted him and convicted him of a federal crime, for which he has been sentenced to serve six years in a federal penitentiary. What was the heinous crime that Nacchio was convicted of? Insider trading, that heinous economic crime in which there are no victims.

In other words, the message delivered by the feds to the telephone companies after 9/11, when the federals were feeling the full force of their power, was, “You need to play ball with us, or else.” Some of the other companies, in an act of extreme cowardice, apparently folded, kneeled, kissed the rings of federal officials, and did what the feds wanted them to.

Not Nacchio and Qwest, for which they deserve the praise and accolades of every freedom-loving American.

At Nacchio’s trial, the federal judge refused to permit him to introduce evidence that his prosecution was retaliation for his refusal to go along with the federal request to violate the law and the rights of his customers. (See [“Documents: Qwest was targeted.”](#) by Sara Burnett and Jeff Smith, in the *Rocky Mountain News*, October 11, 2007.) The judge said the evidence wasn’t relevant. All that was relevant, the judge said, was whether Nacchio had sold some of his Qwest stock as a result of insider information he had acquired as a Qwest executive.

There are two important points to note about what is going on here.

First, as we have long pointed out here at FFF, the real value of the regulated society is not any protection it provides to people. All that protection talk is just a sham. The real purpose of the regulated society is to keep the business and banking community in line — meaning in conformity with federal policy. The real purpose of the rules and regulations is to serve as a Damocles sword, ready to fall on any business or bank that refuses to go along with the feds.

The rationale behind the federal regulated society was best summed up by what a bureaucrat from the State Science Institute said to Hank Rearden in *Atlas Shrugged*:

“Did you really think that we want those laws to be observed?” said Dr. Ferris. “We *want* them broken. You’d better get it straight that it’s not a bunch of boy scouts you’re up against — then you’ll know that this is not the age for beautiful gestures. We’re after power and we mean it. You fellows were pikers, but we know the real trick, and you’d better get wise to it. There’s no way to rule innocent men. The only power any government has is the power to crack down on criminals. Well, when there aren’t enough criminals, one *makes* them. One declares so many things to be a crime that it becomes impossible for men to live without breaking laws. Who wants a nation of law-abiding citizens? What’s there in that for anyone? But just pass the kind of laws that can neither be observed nor enforced nor objectively interpreted — and you create a nation of law-breakers — and then you cash in on guilt. Now that’s the system, Mr. Rearden, that’s the game, and once you understand it, you’ll be much easier to deal with.”

Of course, the feds would argue that the law is the law and that Nacchio broke it and therefore has to pay the price. That, of course, is not the point. The point is that in the regulated society, everyone breaks the law, one way or another, which then provides the feds with the option of prosecuting anyone they want whenever they want.

Consider, for example, the IRS code. Despite never-ending railing among political candidates about how complex the code is, the feds love the complexity. Why? Because they know that no one can ever file a perfect income-tax return and especially not wealthy and influential businessmen. If the feds looked hard enough, they could prosecute anyone they wanted at any time for income-tax violations.

It's the same with insider-trading laws, Sarbanes-Oxley, hiring illegal aliens, or a multitude of other economic crimes. If they hadn't gotten Nacchio on insider trading, they would have undoubtedly gone after him for other things. The point is, he refused to go along with illegality and wrongdoing, and they went after him for it.

To add insult to injury, President Bush and some of his federal cohorts in Congress are seeking to give civil immunity to the telephone companies that allegedly chose to become federal informers. They are trying to get Congress to pass a law that would prohibit the customers of the telephone companies from suing for the companies' allegedly wrongful (and cowardly) misconduct.

In other words, become a federal informer and we'll protect you. Refuse to do so, and we'll send you to jail.

What is the difference between neighborhood captains in Castro's Cuba, who report people's activities to their government, and U.S. telephone companies who report people's activities to their government? Don't they all rationalize their conduct under the same warped sense of "patriotism"?

And why are the telephone companies seeking immunity from civil liability in lawsuits brought by their customers? At trial, wouldn't they have ample opportunity to show that the only records they turned over to the feds were those of terrorists? Why should they be let off the hook if they have illegally and secretly betrayed their customers in order to ingratiate themselves with the feds?

Another critically important point to note in all this is how U.S. foreign policy is at the root of it all. Follow the logic: With the fall of the Berlin Wall in 1989, the feds lose their official enemy — communism. Throughout the 1990s, they poke hornets' nests in the Middle East, knowing that they are provoking anger and rage among people in that part of the world. That anger and rage ultimately erupts into terrorist blowback. The blowback is used to bludgeon American telephone companies into allegedly selling out the rights and privacy of their customers. Those who refuse are prosecuted for violating domestic rules and regulations.

Thus, while the short-term answer to all this involves a refusal to grant civil immunity to the telephone companies that allegedly became federal informers as well as dismissal of all charges against Joe Nacchio, there is only one long-term solution to this noxious weed — pull it out by its root by bringing an end to the U.S. government's overseas empire and its interventionist foreign policy.

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This article was originally published in October 2007.