

U.S. court backs government broadband wiretap access

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By Peter Kaplan

WASHINGTON (Reuters) - A U.S. appeals court on Friday upheld the government's authority to force high-speed Internet service providers to give law enforcement authorities access for surveillance purposes.

The U.S. Court of Appeals for the District of Columbia Circuit rejected a petition aimed at overturning a decision by regulators requiring facilities-based broadband providers and those that offer Internet telephone service to comply with U.S. wiretap laws.

In a split decision, two of three judges on the panel concluded that the 2005 Federal Communications Commission requirement was a "reasonable policy choice" even though information services are exempted from the government's wiretapping authority.

The FCC has set a May 14, 2007, deadline for compliance, and the ruling drew praise from the FCC and the Justice Department, which sought the access.

"Today's decision will ensure that technology does not impede the capabilities of law enforcement to provide for the safety and security of our nation," the department said in a statement.

But the chief author of the 1994 wiretapping law, U.S. Sen. Patrick Leahy, criticized the court's decision, saying Congress had deliberately excluded the Internet when it wrote the wiretap law.

"The court's expansion of (the wiretapping law) to cover the Internet is troubling, and it is not what Congress intended," Leahy, a Vermont Democrat, said in a statement.

The ruling comes at a time when some lawmakers have voiced concern that the Bush administration's communications surveillance program violates civil liberties.

The administration has countered that it needs the program, which allows the National Security Agency to monitor international telephone calls of U.S. citizens, as part of its broader war on terrorism.

Authorities want to be able to access e-mails and other communications because of concerns that the proliferation of Internet communications could allow criminals to circumvent wiretaps by using e-mail and Internet phone services instead of traditional telephone services.

Private networks would not be subject to the wiretap requirements, but those connected with a public network would have to comply with the law.

The FCC decision last year prompted an appeal by universities and libraries. The groups, including the American Library Association and Association of American Universities, challenged the agency's authority to extend such requirements to high-speed Internet services.

The FCC has considered broadband Internet in the category of an "information service," insulating it from many regulations.

But in an opinion written by Judge David Sentelle, the appeals court said the same words could be defined differently by the FCC in applying the wiretapping law.

In a dissenting opinion, one of the judges, Harry Edwards, called the argument "convoluted."

"The agency has simply abandoned the well-understood meaning of 'information services' without offering any coherent alternative interpretation in its place," Edwards said.

A lawyer who represents some of the groups that challenged the FCC said Edwards' dissent makes the case a good candidate for appeal.

"We will give serious consideration to asking for Supreme Court review," said Andrew Schwartzman, president of Media Access Project, a co-counsel for the groups.

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