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AT&T Seeks to Hide Spy Docs

By Ryan Singel Also by this reporter

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AT&T is seeking the return of technical documents presented in a lawsuit that allegedly detail how the telecom giant helped the government set up a massive internet wiretap operation in its San Francisco facilities.

In papers filed late Monday, AT&T argued that confidential technical documents provided by an ex-AT&T technician to the Electronic Frontier Foundation shouldn't be used as evidence in the case and should be returned.

The documents, which the EFF filed under a temporary seal last Wednesday, purportedly detail how AT&T diverts internet traffic to the National Security Agency via a secret room in San Francisco and allege that such rooms exist in other AT&T switching centers.

The EFF filed the class-action lawsuit in U.S. District Court in Northern California in January, seeking damages from AT&T on behalf of AT&T customers for alleged violation of state and federal laws.

Mark Klein, a former technician who worked for AT&T for 22 years, provided three technical documents, totaling 140 pages, to the EFF and to *The New York Times*, which first reported last December that the Bush administration was eavesdropping on citizens' phone calls without obtaining warrants.

Klein issued a detailed public statement last week, saying he came forward because he believes the government's extrajudicial spying extended beyond wiretapping of phone calls between Americans and a party with suspected ties to terrorists, and included wholesale monitoring of the nation's internet communications.

AT&T built a secret room in its San Francisco switching station that funnels internet traffic data from AT&T Worldnet dialup customers and traffic from AT&T's massive internet backbone to the NSA, according to a statement from Klein.

Klein's duties included connecting new fiber-optic circuits to that room, which housed data-mining equipment built by a company called Narus, according to his statement.

Narus' promotional materials boast that its equipment can scan billions of bits of internet traffic per second, including analyzing the contents of e-mails and e-mail attachments and even allowing playback of internet phone calls.

While AT&T's open filings did not confirm the details of Klein's statement, they did not dispute the legitimacy of his claims, and the company's filing included a sealed affidavit attesting to the sensitivity of the documents.

The company asked for a hearing Thursday to determine whether the documents could be used in the class-action lawsuit, whether they would be unsealed or whether the EFF would have to return them. The EFF filed a rebuttal, calling that time frame unworkable and accusing AT&T of not following normal court rules.

AT&T's lawyers also told the court that intense press coverage surrounding the case, including Wired News' publication of Klein's statement, was revealing the company's trade secrets, "causing grave injury to AT&T." The lawyers argued that unsealing the documents "would cause AT&T great harm and potentially jeopardize AT&T's network, making it vulnerable to hackers, and worse."

The EFF filed the documents last week under a temporary seal when it asked the judge to force AT&T to stop the alleged internet spying until the case goes to trial.

Klein's statement and documents are the only direct evidence filed so far by the EFF, and without them its case could be weakened.

It is not clear whether AT&T has served legal papers to Klein.

As of last week, Klein was represented by Miles Ehrlich, who until January

served as a U.S. attorney in San Francisco, prosecuting white-collar crime. Klein is now also represented by two lawyers from the powerhouse law firm Morrison & Foerster, including James J. Brosnahan, who is best known for representing John Walker Lindh, the Marin County, California, man found fighting for the Taliban in Afghanistan.

The EFF declined to comment on the filing, while AT&T did not return a call seeking comment. The case is *Hepting v. AT&T*.

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