

TESTIMONY OF DAVID R. MCATEE II
Senior Executive Vice President and General Counsel
AT&T Inc.
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Subcommittee on Privacy, Technology, and the Law

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Chair Blackburn, Ranking Member Klobuchar, and members of the Subcommittee, thank you for the opportunity to speak with you today.

My name is David McAtee. I am Senior Executive Vice President and General Counsel at AT&T. We appreciate the opportunity to share more about AT&T's process for answering government legal demands for phone records and to answer your questions related to the subpoenas we received in 2022 and 2023 from Jack Smith's Special Counsel's Office.

I. Legal Standards and AT&T Subpoena Process

In responding to legal demands, our processes rest on three important pillars: we protect the privacy of our customers, we follow the law, and we exercise sound professional judgment.

At AT&T, legal demands for customer information are received and processed by a team of trained professionals in our Global Legal Demand Center ("GLDC"). Each day, our GLDC team regularly processes more than 1,000 legal demands, which translates to hundreds of thousands of legal demands each year. These demands include search warrants, subpoenas, and court orders, but most are subpoenas from law enforcement agencies charged with keeping Americans safe. For example, phone records provided by AT&T helped Latah County, Idaho prosecute Brian Kohberger, who pled guilty last year to murdering four University of Idaho students.

Today, we are focused on a particular type of legal demand—grand jury subpoenas from the Department of Justice ("DOJ"). Under the Stored Communications Act, we are *required* to comply with DOJ grand jury subpoenas seeking *non-content* phone records. *See* 18 U.S.C. § 2703(c)(2). In this context, the term "non-content phone records" essentially means the information that appears on a phone bill, including customer name and billing address ("subscriber information") as well as a list of calls made and received during the relevant period, with the phone numbers, time, and duration of each call ("call detail records"). For almost as long as there have been telephones, Americans have understood how this information can be important to criminal investigations.

Under the law, prosecutors and other government actors regularly issue subpoenas for this non-content information unilaterally, without approval from a judge, because they believe the information is relevant to a criminal investigation. However, the law does *not* require prosecutors

to tell us why they believe the information is relevant to an investigation—or even what they are investigating—and they typically do not do so. As was true with the subpoenas we received from Jack Smith’s Special Counsel’s Office, grand jury subpoenas for non-content information typically specify only phone numbers, not names, and provide no substantive information concerning the underlying investigation or the basis for the subpoena.

As a result, whether such a grand jury subpoena will be issued is up to the prosecutor and the prosecutor alone. AT&T is the mere recipient of the subpoena, and as such, our role is to follow our three pillars of practice: protect the privacy of our customers, follow the law, and exercise sound professional judgment. To that end, when AT&T receives a grand jury subpoena from DOJ, our GLDC team conducts a multi-step process to confirm that it is both valid and compulsory because it (a) is issued by an agency with subpoena authority, (b) is complete and contains all required signatures, and (c) calls only for information that we are *obligated* to provide under the law.

The GLDC’s work is not a rote process; this scrutiny leads to the GLDC team rejecting or not responding, in whole or in part, to about one third of the legal demands we receive. Nor is it a theoretical exercise. Failure to comply with a grand jury subpoena or violating associated non-disclosure orders comes with significant legal consequences, including contempt and fines. *See e.g.*, Fed. R. Crim. P. 17(g). In fact, we know of at least one company that was fined for failing to comply with a Special Counsel’s Office legal demand. In that case, the fine doubled with every additional day of noncompliance.

II. Special Counsel Grand Jury Subpoenas

I will now turn to the widely reported subpoenas that we received in 2022 and 2023 from Jack Smith’s Special Counsel’s Office.

Each of the subpoenas we received from Jack Smith’s office was issued from a proper agency with subpoena power (namely, DOJ), contained all required information and signatures, and sought only non-content information. As a result, responding to each subpoena was not optional; it was compulsory. In addition, in each case, the Special Counsel’s Office sought and obtained a judicial non-disclosure order (“NDO”), which prohibited us from providing notice to any customer impacted by the subpoena. An NDO is a direct command from a court based on a judicial finding that disclosure would jeopardize an investigation; it is not a determination by AT&T, as the subpoena recipient, that the target of the subpoena poses such a risk. Finally, none of the subpoenas we received from Jack Smith’s office sought information from Senate Sergeant at Arms accounts governed by 2 U.S.C. § 6628 (“Section 6628”) as it was on the books in 2022 and 2023.

In May 2023, the AT&T Legal Department engaged with the Special Counsel’s Office regarding a subpoena that the Legal Department identified as seeking the production of records pertaining to campaign accounts of two sitting Members of Congress. In unambiguous, written correspondence that has been produced to this Committee, our legal team sought the Special Counsel’s Office’s

view on the applicability of the Speech or Debate Clause of the U.S. Constitution to the subpoena. The Special Counsel's Office did not respond and did not pursue the subpoena further. As a result, no records were produced.

Years later, in responding to recent inquiries from this Committee, we identified two earlier subpoenas from Jack Smith's office seeking records for a sitting Member of Congress. Both were received in January 2023, and in both cases, the subpoena did not provide any indication that the subpoena targeted records associated with a Member of Congress. Instead, both subpoenas sought records on a personal account and, in both cases, listed only a phone number. In both cases, the name associated with the account was an exceptionally common name shared by thousands of AT&T customers. As a result, when the GLDC team followed its processes as described above, it did not know that the two names associated with these accounts were sitting Members of Congress, and the requested information was produced in due course as required by law.

III. Looking Ahead

As envisioned by Section 6628, AT&T already has a process to alert senators of legal demands seeking records of Senate Sergeant at Arms accounts, and until last week, we were engaging with the Senate Sergeant at Arms to implement recent amendments to Section 6628 extending the same protections to campaign and personal accounts. While those amendments have now been repealed, AT&T is continuing its work in this important area. Shortly after the amendments were repealed, AT&T began engaging with the Senate Sergeant at Arms and the House Chief Administrative Officer to establish a process that would allow AT&T to identify all phone numbers associated with a Member of Congress, not just official phone numbers, so that, going forward, AT&T can meet Members' reasonable expectations of privacy to the full extent permitted by law. We welcome your input as we establish this process.

We appreciate the Subcommittee's focus on this important matter.

I welcome your questions.