



**TO: Members of the Senate Finance Committee**  
**FROM: Allen Gilbert, executive director, ACLU-VT**  
**DATE: Jan. 20, 2012**  
**SUBJECT: ACLU-VT position on smart meters**

The American Civil Liberties Union of Vermont is an organization of 2,400 Vermonters who care deeply about personal freedoms, especially privacy.

The ACLU has become increasingly concerned about the collection and storage of data that reflect a person's individual actions. This data is of great interest to law enforcement, for a variety of reasons. Through litigation, for example, we've learned that Vermont law enforcement are obtaining Vermonters' cell-phone data to track individuals' whereabouts. Police are utilizing secret proceedings such as inquests to obtain the data. We think that is wrong.

The collection of electrical usage data through smart meters represents a similar threat. We believe the following are critically important:

- Law enforcement should not access Vermonters' smart meter data without a warrant.
- Any subpoenas or other court orders for a customer's smart meter data should be presented to the customer him/ herself, not to the utility. The customer deserves the opportunity to contest the subpoena.

These procedures accomplish two things:

- Customers' privacy is protected.
- Utilities have an appropriate response to data requests from law enforcement or others.

We also believe:

- Utility customers should decide for themselves whether they wish to have a smart meter installed at their home. Consent must be renewed every two years but can be revoked by the customer at any time.
- A utility should not charge extra fees if a customer decides not to opt in and have a smart meter installed at his/her home. The savings the customer foregoes because of his/her decision is already a penalty for nonparticipation. Additionally, extra fees could, because of the classes of people who might decline to opt in, lead to unintentional, yet still illegal, discrimination.

Electrical usage data is of great interest to third parties other than law enforcement. Washing machine manufacturers, for example, may like to know who owns an older, energy-inefficient washing machine that is likely to be replaced soon. The sharing of such data, however, lies beyond the primary purpose of smart meter installation. Therefore:

- A customer's consent should be required anytime his/her data is being shared, sold, or given to a third-party not performing a primary purpose on behalf of the utility.

Finally, we believe that a utility should be required to report yearly on a number of things:

- The number of times customer data has been sought without customer consent, with details of any access;
- The result of an independent audit of privacy and security practices;
- The number and identities of third-party access; and
- The number of breaches, and the number/percentage of customers affected by breaches.