

# United States Senate

WASHINGTON, DC 20510

June 20, 2014

President Barack Obama  
The White House  
1600 Pennsylvania Avenue NW  
Washington, DC 20500

Dear Mr. President:

We welcome your proposal, announced on March 27, 2014, to end the bulk collection of Americans' phone records under Section 215 of the USA PATRIOT Act. We believe – as you do – that the government can protect national security by collecting the phone records of individuals connected to terrorism, instead of collecting the records of millions of law-abiding Americans. We also believe that you have the authority to implement your proposal now, rather than continuing to reauthorize the existing bulk collection program in 90-day increments.

Your proposal is consistent with recommendations made by your Review Group, which supported ending government storage of bulk telephony metadata under Section 215 and a transition to a system in which phone companies provide specific customers' records to the government only when the government has a demonstrated need and an appropriate court order or emergency authorization.

Your proposal's focus on using Section 215 to make specific queries – as opposed to collecting bulk records – reflects the intent of the original USA PATRIOT Act and is consistent with a legislative proposal that was first included in the Senate-passed version of the USA PATRIOT Improvement and Reauthorization Act (S. 1389) in 2005, which was passed by unanimous consent. A version of this proposal has been included in multiple pending bills: bipartisan and bicameral surveillance reform legislation introduced by Sen. Leahy and Rep. Sensenbrenner, the USA Freedom Act (S. 1599); bipartisan comprehensive surveillance reform legislation introduced by Sen. Wyden (S. 1551); and a stand-alone proposal introduced by Sen. Udall (S. 1182). We also applaud your proposal's emphasis on limiting searches to individual suspects and their associates, and its lack of a data retention mandate for telecommunications companies, both of which are elements of the legislative proposals noted above.

Because we believe the ongoing bulk collection of Americans' phone records is very intrusive and lacks any demonstrated necessity, we are interested in seeing your proposal to end the bulk collection of phone records move forward as quickly as possible. Senior administration officials, however, have stated that your proposed reforms to Section 215 require new legislation – and have suggested that in the absence of new legislation, there is no plan to suspend the bulk collection of Americans' phone records.

While we agree it is vital for Congress to enact reforms of domestic surveillance law – something each of us is committed to seeing through – we are not confident that the version of the USA Freedom Act that recently passed the House of Representatives would actually ban the bulk collection of Americans' records. As the Senate begins to consider the best path forward for surveillance reform, we believe that, in the meantime, the government already has sufficient authorities today to implement most, if not all, of the Section 215 reforms laid out in your proposal without delay and in a way that does not harm our national security. More comprehensive congressional action is vital, but the executive branch need not



wait for Congress to end the dragnet collection of millions of Americans' phone records for a number of reasons.

First, we believe that the Foreign Intelligence Surveillance Court's (FISC) expansive interpretation of the USA PATRIOT Act to allow the collection of millions of Americans' phone records makes it likely that the FISC would also agree to a more narrowly-drawn interpretation of the law, without requiring further congressional action. Certainly, it seems highly likely that the FISC would permit the executive branch to use its current authorities to obtain phone records up to two 'hops' from a suspicious phone number or to compel technical assistance by and compensation for recipients of court orders. Unless the FISC has already rejected such a request from the government, it does not seem necessary for the executive branch to wait for Congress before taking action.

Second, for the same reason, we believe that the FISC would likely approve the defined and limited prospective searches for records envisioned under your proposal pursuant to current USA PATRIOT Act Section 214 pen register authorities, given how broadly it has previously interpreted these authorities. Again, we believe that it is vital for Congress to enact reforms, but we also believe that the government has sufficient authorities today under the USA PATRIOT Act to conduct these targeted prospective searches in the interim.

Finally, although we have seen no evidence that the government has needed the bulk phone records collection program to attain any time-sensitive objectives, we agree that new legislation should provide clear emergency authorities to allow the government to obtain court approval of individual queries after the fact under specified circumstances. The law currently allows prospective emergency acquisitions of call records under Section 403 of the Foreign Intelligence Surveillance Act (FISA), and the acquisition of past records without judicial review under national security letter authorities (which are also the subject of recommended reforms). While utilizing a patchwork of authorities is not ideal, it could be done on an interim basis, while Congress works to pass legislation.

We believe the way to restore Americans' constitutional rights and their trust in our intelligence community is to immediately end the practice of vacuuming up the phone records of huge numbers of innocent Americans every day and permit the government to obtain only the phone records of people actually connected to terrorism or other nefarious activity. We support your March 27, 2014, proposal to achieve these goals, but we also view ending bulk collection as an imperative that cannot wait. We urge you to implement your proposal with reasonable haste to protect both our national security and the personal rights and liberties of U.S. citizens.

Sincerely,



Mark Udall



Ron Wyden



Martin Heinrich