



May 7, 2014

The Honorable Bob Goodlatte
House Judiciary Committee
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable John Conyers
House Judiciary Committee
B351 Rayburn House Office Building
Washington, DC 20515

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**Re: With Discrete Amendments, ACLU Applauds Committee's Vote
to End Bulk Collection and Move USA Freedom Act**

Dear Chairman Goodlatte and Ranking Member Conyers:

While we request certain important improvements, we write in support of the effort to end the bulk collection of Americans' most personal information through passage of H.R. 3361, the USA Freedom Act ("Uniting and Strengthening America by Fulfilling Rights and Ending Eavesdropping, Dragnet Collection, and Online Monitoring Act").

The manager's amendment as written does take important steps forward, but we urge you to adopt these changes. The bill should:

- Define "specific selection term" to guarantee that it will effectively end bulk collection of Americans' phone records;
- Limit the circumstances in which the government can obtain records more than one hop away from its target;
- Ensure that judges in the Foreign Intelligence Surveillance Court have the authority to determine whether an application passes legal muster;
- Close the "back door" in the FISA Amendments Act; and
- Include additional transparency provisions that will allow companies who receive orders for the production of records under the law to meaningfully inform Americans of the scope of such surveillance.

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Last year, we discovered that the government has secretly been operating under a sweeping interpretation of Section 215 of the USA Patriot Act, pursuant to which it has engaged in the bulk collection of telephone “metadata”—including numbers dialed, date and time of call and duration of conversation—for a substantial percentage of all calls in the United States. The same legal theory could be deployed to justify the bulk collection of a vast array of other records.

The scope of this intelligence collection goes far beyond what many members of Congress, and this Committee, believed it would when voting for the Patriot Act and subsequent amendments. Contrary to the claims of some, this metadata is exceedingly sensitive, and can reveal intimate details about our social, political, religious and private lives.

In its current form, the manager’s amendment would create a new authority for prospective collection of call detail records in international terrorism investigations, but would require a showing by the government in each case that the specific records sought pertain to a specific investigation. Collection would be further limited to two “hops” out from the target, which is consistent with the president’s reform proposal. If this new framework works correctly, the government would no longer be able to engage in bulk collection of call detail records.

The bill would also prohibit bulk collection of other types of records under section 215 of the Patriot Act; would place appropriate limits on the use of pen register and trap and trace devices, which would prevent that separate authority from being used to engage in bulk collection; and would place limits on the abuse of national security letter authorities. These are all welcome changes that would provide meaningful new privacy and civil liberties protections.

The changes noted above, however, are crucial in ensuring that the bill does in fact achieve meaningful reform. The term “specific selection term” must be defined to prevent what would amount to bulk collection through the use of a broad term (such as a zip code). Additionally, judges must be given express authority to determine whether an application for collection meets the standard laid out in the bill; they must not return to being a mere rubber stamp.

The legislation should also reincorporate the limits in the original proposal that would prevent the government from searching information collected under Section 702 of FISA for the communications content of U.S. persons. Finally, the government must be subject to robust reporting requirements, and companies that receive orders under the law must be allowed to disclose the number of accounts affected by each respective surveillance authority.

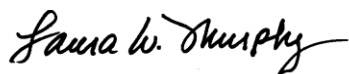
We also continue to express concern that the lack of any meaningful constraint on searching call detail records once placed in the NSA’s “corporate store” could undo the Committee’s reform efforts today. Even at two “hops” a vast number of innocent Americans’ records will nevertheless be collected by the NSA under the new call record authority. We strongly urge Congress to also ensure that firm limits are placed on the NSA’s ability to access this immense pool of data, as the Privacy and Civil Liberties Oversight Board unanimously recommended in January. Congress should not allow the corporate store to serve as a back door into much of the same sensitive information that this reform proposal sets out to protect.

To be clear, even if the Committee passes the manager's amendment with our requested changes, further reforms will be necessary to bring government surveillance authority in line with the Constitution. That said, the manager's amendment, with the changes described above, would represent an important step forward.

We look forward to working with the committee and Congress as you consider these desperately needed civil liberties protections, and we applaud the Committee's initiative in finally moving real reform to a vote.

Please do not hesitate to contact Legislative Counsel/Policy Advisor Gabe Rottman at 202-675-2325 or grottman@aclu.org if you have any questions or comments.

Sincerely,



Laura W. Murphy
Director, Washington Legislative Office



Gabriel Rottman
Legislative Counsel/Policy Advisor