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The White House

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United States Department of Justice

Majority Leader Harry Reid
Minority Leader Mitch McConnell
United States Senate

Speaker John Boehner
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United States House of Representatives

Chairman Patrick Leahy
Ranking Member Charles Grassley
Committee on the Judiciary
United States Senate

Chairman Bob Goodlatte
Ranking Member John Conyers, Jr.
Committee on the Judiciary
United States House of Representatives

Chairman Diane Feinstein
Vice Chairman Saxby Chambliss
Senate Permanent Select Committee on
Intelligence
United States Senate

Chairman Mike Rogers
Ranking Member Dutch Ruppersberger
House Permanent Select Committee on
Intelligence
United States House of Representatives

April 1, 2014

We the undersigned are writing to express support for ending the government's bulk collection of data about individuals. We strongly urge swift markup and passage of the USA FREEDOM Act (H.R.3361), which would enact appropriate surveillance reforms without sacrificing national security. This letter focuses on bulk collection, but overbroad NSA surveillance raises many more privacy and security issues that Congress and the Administration should address.

We appreciate that Congress and the Administration are converging on consensus that the National Security Agency's (NSA) bulk collection of telephone records must end. Among other things, legislation on bulk collection should:

- Prohibit bulk collection for all types of data, not just phone records. Section 215 of the PATRIOT Act applies broadly to business records, and the Department of Justice has claimed authority for bulk collection of any records that reveal relationships between individuals.¹ Legislation that focuses only on phone records may still allow for the bulk collection of, for example, Internet metadata, location information, financial records, library records, and numerous other records that may help "identify unknown relationships among individuals."²

¹ Administration White Paper: Bulk Collection of Telephony Metadata Under Section 215 of the USA Patriot Act, Aug. 9, 2013, pg. 14, available at <http://cryptome.org/2013/08/doj-13-0809.pdf>.

² *Id.* at pg. 14. Although the White Paper distinguishes medical and library records from communications metadata, there is no guarantee that such information could not at some point be determined to meet the DOJ's "relevance" standard.

- Prohibit bulk collection under Section 214 as well as Section 215 of the PATRIOT Act, or under any other authority. While the NSA's bulk collection of telephone records under the purported authority of Section 215 has received considerable attention, the NSA engaged in the bulk collection of Internet metadata using the Pen/Trap authority under Section 214 until 2011.³ Legislation that focuses solely on Section 215 would still fail to prohibit the bulk collection of phone and Internet metadata using Section 214, the National Security Letter (NSL) statutes, or another authority.
- Require prior court approval for each record request. Under current law, the government must obtain approval from the FISA court before it can force private entities to turn over records (in bulk or otherwise) under Sections 215 and 214 of the PATRIOT Act. In addition, President Obama, in his January 17th policy announcement, established that a judicial finding is required before the government can query the phone records that the NSA collected in bulk.⁴ Congress should leave this key safeguard in place. If there is concern that the FISA Court would move too slowly to authorize domestic surveillance beforehand, then the solution should be to provide the FISA Court with sufficient resources.

The USA FREEDOM Act addresses each of these reforms, as well as others, by aiming to prohibit bulk collection of all data under Section 215 and 214 and the NSL statutes while preserving the requirement of prior court approval. Beyond bulk collection issues, the USA FREEDOM Act also includes strong transparency provisions for both government and private entities, and the bill closes a loophole that allows the government to search for the content of Americans' communications without a court order. In contrast, the FISA Transparency and Modernization Act (H.R.4291) removes the requirement of prior court approval, and instead creates a new authority that gives intelligence agencies virtual subpoena power over Internet and telephone records. Additional questions have arisen regarding the scope of the FISA Transparency and Modernization Act: specifically whether the bill would actually prohibit bulk collection of all data, including financial information, and the extent to which the bill would enable surveillance of individuals who are broadly "associated" with a foreign power even if the individual is not in contact with or known to the foreign power. Accordingly, we oppose the FISA Transparency and Modernization Act in its current form, and we urge swift markup and passage of the USA FREEDOM Act.

³ See Report on the National Security Agency's Bulk Collection Programs for USA PATRIOT Act Reauthorization, Dept. of Justice, Feb. 2, 2011, pg. 3, http://www.dni.gov/files/documents/2011_CoverLetters_Report_Collection.pdf. The program was shut down because it was ineffective, not because the government ceded legal authority for the bulk collection of Internet metadata. See Glenn Greenwald, Spencer Ackerman, *NSA collected Americans' email records in bulk for two years under Obama*, The Guardian, Jun. 27, 2013, <http://www.theguardian.com/world/2013/jun/27/nsa-data-mining-authorized-obama>.

⁴ Remarks of the President on Review of Signals Intelligence, The White House, Jan. 17, 2014, <http://www.whitehouse.gov/the-press-office/2014/01/17/remarks-president-review-signals-intelligence>.

Overbroad national security surveillance raises a host of Constitutional, human rights, and practical concerns, and we urge Congress and the Administration to address systemic reform. The trust of the American people and the global public cannot be regained with legislation that achieves only modest changes to discrete programs. We look forward to working with Congress and the Administration to advance legislation and policies that preserve the integrity of the Internet and the free exercise of individual liberty and human rights.

Sincerely,

Access

Advocacy for Principled Action in Government
AIDS Policy Project
American Association of Law Libraries
American Booksellers Foundation for Free Expression
American Civil Liberties Union
American Library Association
Amnesty International USA
Arab American Institute
Association of Research Libraries
Bill of Rights Defense Committee
Brennan Center for Justice
Center for Democracy & Technology
Center for Financial Privacy and Human Rights
Citizens for Health
Competitive Enterprise Institute
Constitution Project
CREDO Mobile
Cyber Privacy Project
Defending Dissent Foundation
DownsizeDC.org
Electronic Frontier Foundation
Freedom of the Press Foundation
FreedomWorks
Free Press Action Fund
Generation Opportunity
Government Accountability Project
Human Rights Watch
Liberty Coalition

National Association of Criminal Defense Lawyers
National Coalition Against Censorship
National Security Counselors
Open Technology Institute, New America Foundation
OpenTheGovernment.org
PEN American Center
R Street Institute
Reddit
Republican Liberty Caucus
Rutherford Institute
Take Back Washington
TechFreedom
World Privacy Forum