

June 17, 2014

The President
The White House
1600 Pennsylvania Ave., N.W.
Washington, DC 20500

The Honorable Eric H. Holder
United States Attorney General
Department of Justice
950 Pennsylvania Ave., N.W.
Washington, DC 20530

Re: Ending Renewal of the Section 215 Bulk Telephony Metadata Program

Dear Mr. President and Attorney General Holder:

We write to urge you **not** to renew the Section 215 Bulk Telephony Metadata Program when the current order expires on June 20, 2014. The program is not effective. It should end.

The Section 215 Bulk Telephony Metadata Program is unconstitutional and violates the plain text of Section 215 and the purpose of the Foreign Intelligence Surveillance Act (“FISA”). The call detail records collected under the program are not specifically tailored or limited to a particular investigation; the NSA collects all records including the records of hundreds of millions of Americans who are under no suspicion of wrongdoing.¹ Furthermore, the Verizon Order violates the plain text of Section 215 because it requires the production of hundreds of millions of private call records that are not “relevant” to any national security investigation.²

These telephone records show who we call and when, but can also reveal intimate details about our daily lives.³ These records reveal our closest contacts and associates, and can reveal confidential relationships between individuals and their attorneys, doctors, or elected representatives.

We recognize the initial steps the President took in January to reform surveillance programs and procedures, provide greater transparency, and especially his commitment to “end

¹ *In re Application of the FBI for an Order Requiring the Production of Tangible Things from Verizon Bus. Network Serv., Inc. on Behalf of MCI Commc'n Serv., Inc. D/B/A Verizon Bus. Serv.*, Dkt. No. BR 13-80 at 1-2 (FISA Ct. Apr. 25, 2013).

² *See* Petition for a Writ of Mandamus and Prohibition, or a Writ of Certiorari, *In re Electronic Privacy Information Center*, 134 S. Ct. 638, at 31-35 (July 8, 2013) (No. 13-58).

³ *See Continued Oversight of the Foreign Intelligence Surveillance Act: Hearing Before the S. Comm. on the Judiciary*, 113th Cong. (2013) (statement of Edward Felten, Professor of Computer Science and Public Affairs, Princeton University).

the Section 215 bulk metadata program as it currently exists.”⁴ The President determined that queries of the telephony metadata can only occur when a judicial finding determines there is reasonable, articulable suspicion that the selection term is associated with a foreign terrorist organization.⁵ Additionally, the President immediately limited the analysis of the metadata to two hops from the selection term instead of three.⁶ Also, several FISC opinions and orders have been declassified, a preliminary review of big data and privacy was initiated and completed, and Presidential Policy Directive 28 provided guidelines and improved oversight for signals intelligence. Additionally, the President has committed to implementing “a majority of the recommendations” made by the President's Review Group.⁷ These are all necessary reforms and efforts but more still needs to be done and previous commitments must be kept.

The NSA’s Bulk Metadata program is simply not effective. As Senator Leahy has repeatedly said, “the administration has not demonstrated that the Section 215 phone records collection program is uniquely valuable enough to justify the massive intrusion on Americans' privacy.”⁸ This statement is further supported by the Privacy and Civil Liberties Oversight Board and the President's Review Group, each of which engaged in a detailed review of the Section 215 program's effectiveness.⁹ The Oversight Board concluded, “[g]iven the limited value this program has demonstrated to date . . . we find little reason to expect that it is likely to provide significant value, much less essential value, in safeguarding the nation in the future.”¹⁰

The NSA’s Bulk Metadata program has been misused.¹¹ Analyst conducted manual searches in violation of court orders.¹² The NSA improperly disseminated the call records without proper minimization and retained records beyond the applicable retention rules.¹³ In one instance, the NSA received the credit card numbers of a large amount of customers from a particular provider.¹⁴

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

⁵ Press Release, Office of the Director of National Intelligence, Joint Statement by the DNI and Attorney General on the Declassification of Additional Documents Regarding Collection (Feb. 12, 2014), *available at* <http://www.dni.gov/index.php/newsroom/press-releases/198-press-releases-2014/1018-joint-statement-by-director-of-national-intelligence-james-clapper-and-attorney-general-eric-holder-on-the-declassification-of-additional-documents-regarding-collection-under-section-501-of-the-foreign-intelligence-surveillance-act>.

⁶ *Id.*

⁷ The White House, *FACT SHEET: Review of U.S. Signals Intelligence* (Jan. 17, 2014), <http://www.whitehouse.gov/the-press-office/2014/01/17/fact-sheet-review-us-signals-intelligence>.

⁸ *Hearing on the Report of the Privacy and Civil Liberties Oversight Board on Reforms to the Section 215 Telephone Records Program and the Foreign Intelligence Surveillance Court Before the S. Comm. on the Judiciary*, 113th Cong. 1 (2014) (statement of Sen. Patrick Leahy, Chairman, S. Comm. on the Judiciary).

⁹ See PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD, REPORT ON THE TELEPHONE RECORDS PROGRAM CONDUCTED UNDER SECTION 215 OF THE USA PATRIOT ACT AND ON THE OPERATIONS OF THE FOREIGN INTELLIGENCE SURVEILLANCE COURT (Jan. 23, 2014) [hereinafter *PCLOB Report*]; PRESIDENT'S REVIEW GROUP ON INTELLIGENCE AND COMMUNICATIONS TECHNOLOGIES, LIBERTY AND SECURITY IN A CHANGING WORLD (Dec. 12, 2013) [hereinafter *President's Review Group Report*].

¹⁰ *PCLOB Report*, *supra* note 9 at 155. See also *President's Review Group Report*, *supra* note 9 at 104 (“Our review suggests that the information contributed to terrorist investigations by the use of Section 215 telephony meta-data was not essential to preventing attacks”)

¹¹ See *PCLOB Report*, *supra* note 9 at 46-56 (2014).

¹² *Id.* at 50.

¹³ *Id.* at 52-53, 55.

¹⁴ *Id.* at 55.

Legislative proposals are pending in Congress. More needs to be done. But the decision to renew the Section 215 authority is solely within the authority of the Department of Justice.

We urge you to end bulk collection now.

Respectfully,

Access

Advocacy for Principled Action in Government

American Association of Law Libraries

American Civil Liberties Union

American Library Association

Association for Research Libraries

Bill of Rights Defense Committee (BORDC)

Center for Democracy & Technology

Center for Digital Democracy

Center for Financial Privacy and Human Rights

Center for Media Justice

Charity & Security Network

Citizens for Responsibility and Ethics in Washington (CREW)

Consumer Watchdog

Council on American-Islamic Relations

Defending Dissent Foundation

Demand Progress

Electronic Frontier Foundation

Electronic Privacy Information Center (EPIC)

Freedom of the Press Foundation

Government Accountability Project

National Association of Criminal Defense Lawyers

OpenTheGovernment.org

Patient Privacy Rights

Project On Government Oversight (POGO)

Sikh American Legal Defense and Education Fund (SALDEF)