Statement of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Hearing on "Continued Oversight of U.S. Government Surveillance Authorities"
December 11, 2013

Today, the Judiciary Committee meets to conduct further oversight of the intelligence community's surveillance activities. This Committee has held a series of open hearings that have sharpened the Committee's thinking and furthered the public dialogue on these important issues. Today marks our third full Committee hearing, and Senator Franken also convened a hearing on transparency issues last month in the Subcommittee on Privacy, Technology and the Law.

At our first hearing in July, we discussed with Deputy Attorney General Cole the broad "relevance" standard that is being used to justify the bulk collection of Americans' phone records under Section 215 of the USA PATRIOT Act, and I appreciate that the Deputy Attorney General has returned today to continue that discussion. We also discussed the utility of the bulk phone records collection program in light of statements by some officials that had conflated the usefulness of Section 215 with Section 702 of the Foreign Intelligence Surveillance Act (FISA), and left the inaccurate impression that 54 terrorist "plots" had been "thwarted" as a result of these programs. Deputy Director Inglis helped to clear up this confusion, and we learned that in fact there was only one example of the Section 215 phone records program being the "but-for" cause of disrupting a terrorist event. That sole example was a material support prosecution of a San Diego cabdriver who sent roughly $8,000 to Somalia.

At our second hearing in early October, General Alexander confirmed that the notion that the Section 215 phone records program had helped to thwart 54 terrorist plots was inaccurate. General Alexander and Director of National Intelligence Clapper also answered questions about the trust deficit arising from the range of serious legal violations committed in programs conducted under Section 215 of the USA PATRIOT Act and Section 702 of FISA.

Today, the Committee renews its examination of government surveillance activities – once again in the wake of a series of new revelations. These new disclosures raise significant questions about the scope and wisdom of our surveillance activities both at home and abroad. It is clear that the oversight work of the Committee is far from finished.

Just in the last week, there have been press reports that the NSA is collecting billions of records a day of cell phone locations around the world, and can track individuals and map their relationships. There also have been reports that the NSA is monitoring online video games.

And last month, the administration released a set of documents revealing details about yet another massive dragnet collection program, in addition to the phone records program. This time the NSA was gathering in bulk an enormous amount of Internet metadata, under the pen register and trap and trace device authority in FISA. Just like Section 215, there is nothing in the pen register statute that expressly authorizes the dragnet collection of data on this scale.

Although the Internet metadata collection program is not currently operational, it resulted in a series of major compliance problems – just like the Section 215 program. According to the FISA Court, the NSA exceeded the scope of authorized acquisition not just once or twice, but "continuously" during many of the years the program was in operation. The problems were so severe that the FISA Court ultimately suspended the program entirely for a period of time before approving its renewal. Once renewed, the government asserted that this bulk collection was an important foreign intelligence tool – which is the claim it makes now about the Section 215 phone records program. But then in 2011 the government ended this Internet metadata program because, as Director Clapper explained, it was no longer meeting "operational expectations." It is important to note that the administration does not believe that there is any legal impediment to re-starting this bulk Internet data collection program if it – or a future administration – wanted to do so.

The legal justification for this Internet metadata collection is troubling. As with the Section 215 program, the Internet metadata program was based on a "relevance" standard. And as with the Section 215 program, there is no adequate limiting principle to this legal rationale. The American people have been told that all of their phone records are relevant to counterterrorism investigations. Now they are told that all Internet metadata is also relevant; and apparently fair game for the NSA to collect. This legal interpretation is extraordinary, and will have serious privacy and business implications in the future – particularly as new communications and data technologies are developed.

So it should come as no surprise that the American technology industry is greatly concerned about these issues. I have heard from a number of companies who worry that their global competitiveness has been weakened and undermined. American businesses stand to lose tens of billions of dollars in the coming years, and we need to make substantial reforms to our surveillance laws to rebuild confidence in the U.S. technology industry.

Earlier this week, eight major technology companies – including Microsoft, Google, Apple, Facebook, and Yahoo – released a set of five principles for surveillance reform. Citing the "urgent need to reform government surveillance practices worldwide," the companies call for greater oversight and transparency, but importantly they also advocate for limits that would require the government to rely on targeted searches about specific individuals, rather than the bulk collection of Internet communications.

I have introduced the USA FREEDOM Act with Senator Lee here in the Senate, and our bill takes many of these steps. I appreciate the support we have received from the technology industry for those efforts, and I look forward to hearing its perspective on the second panel. Without objection I will place in the record the open letter and reform principles from the technology companies, an earlier letter from technology companies applauding the USA FREEDOM Act, and a supportive letter from a coalition of civil society organizations, companies, trade associations and investors.

Support from the technology industry is representative of the broad-based, bipartisan support for our legislation. Organizations across the spectrum have endorsed the bill, from the ACLU to the NRA. I also want to thank Senator Lee, Senator Durbin, Senator Blumenthal and Senator Hirono

on this Committee for their cosponsorship. Our bipartisan, bicameral legislation is a commonsense bill that makes real and necessary reforms. I welcome input on this legislation, and I look forward to working on this effort in the coming months. I want to thank our witnesses for being here today, and in particular for returning to this Committee after our unexpected postponement of this hearing in November.

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