

**Statement of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
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
February 12, 2014**

Today, the Judiciary Committee welcomes all five members of the Privacy and Civil Liberties Oversight Board (PCLOB) for our fifth hearing this Congress on government surveillance activities. The PCLOB's recent report adds to the growing chorus calling for an end to the government's dragnet collection of Americans' phone records under Section 215 of the USA PATRIOT Act.

This is not the first time that the Committee has heard this message. On January 14, 2014, the Committee heard testimony from the President's Review Group on Intelligence and Communications Technologies, which found that the Section 215 program has not been essential to our national security and that the government should not store Americans' phone records in bulk.

I could not agree more. As I have said repeatedly, 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. The PCLOB's report likewise determined that the program has not been effective, saying: "We have not identified a single instance involving a threat to the United States in which the program made a concrete difference in the outcome of a counterterrorism investigation. Moreover, we are aware of no instance in which the program directly contributed to the discovery of a previously unknown terrorist plot or the disruption of a terrorist attack." This finding stands in stark contrast to initial claims by senior NSA officials that the Section 215 program helped thwart dozens of terrorist plots.

The primary defense of the NSA's bulk collection program now appears to be that the program is more of an insurance policy than anything else. But even that defense of the program has been called into question. According to news reports, under this program the NSA collects somewhere in the range of 20 to 30 percent of domestic phone records. These estimates are consistent with the President's Review Group report, which cautioned against placing too much value in this program as a tool to rule out a domestic connection to a terrorist plot – the so-called insurance policy. The Review Group report tells us that is precisely because – although the program is unprecedented in scope – it still covers only a portion of the total phone metadata held by service providers.

The intelligence community has defended its unprecedented, massive, and indiscriminate bulk collection by arguing that it needs the entire "haystack" in order for it to have an effective counterterrorism tool – and yet the American public now hears that the intelligence community really only has 20 to 30 percent of that haystack. That calls even further into question the effectiveness of this program.

The PCLOB report also provides a detailed constitutional and statutory analysis of this program, and concludes that the program “lacks a viable legal foundation under Section 215” and “implicates constitutional concerns under the First and Fourth Amendments.” The PCLOB report further reveals that although the Foreign Intelligence Surveillance Court first authorized this program in 2006, it did not issue an opinion setting forth a full legal and constitutional analysis of the program until last year. These conclusions are particularly important to the work of this Committee as we consider the legal theory on which this program rests. I remain deeply concerned that under the administration’s interpretation of Section 215, the government could acquire virtually any database it thinks might one day contain useful information. This could have serious privacy and business implications in the future, particularly as new communications and data technologies are developed.

The PCLOB report underscores the need to rein in the government’s overbroad interpretation of Section 215 and to provide for greater transparency. Although the administration is in the process of undertaking some preliminary and positive changes to the bulk phone records collection program, these reforms are not enough. Congress should heed the advice of the PCLOB, and shut this program down. Congress should enact the USA FREEDOM Act.

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