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June 17, 2013

The Honorable Robert Mueller  
Director, Federal Bureau of Investigation  
J. Edgar Hoover Building  
935 Pennsylvania Avenue, N.W.  
Washington, D.C. 20535

Dear Director Mueller:

In anticipation of your appearance before the Senate Judiciary Committee on June 19, 2013, I am providing you with advanced notice of my intent to ask you a series of questions regarding the vast collection of various "telephony metadata" from wireless carrier Verizon that was recently leaked to the media. This revelation has raised some serious questions regarding the authorities provided under Section 215 of the USA PATRIOT Act.

Specifically, Section 215 authorizes procedures by which the Federal Bureau of Investigation (FBI) may apply to the Foreign Intelligence Surveillance Court (FISC) for an order to require a person or entity to produce "any tangible thing" such as phone records. In its application, the FBI is required to include a statement of facts demonstrating "reasonable grounds to believe that the tangible things sought are relevant to an authorized investigation...to obtain foreign intelligence information." The FBI requested large quantities of raw data from Verizon pursuant to a FISC order, and, according to Senate Select Intelligence Committee Chairman Diane Feinstein (D-CA) this was one of many similar requests made repeatedly over the course of the past seven years.

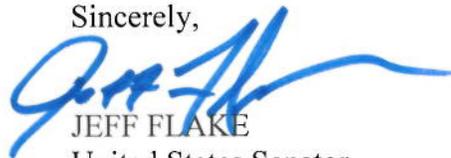
Pursuant to Section 215, the judge is required to include minimization procedures in an approved court order to minimize the retention and dissemination of information collected on unconsenting U.S. persons when the information does not relate to foreign intelligence. However, on June 6, 2013, former FBI Assistant Director Tom Fuentes spoke with CNN and confirmed the Verizon order was "a blanket order so that you could go back at another time and look specifically at a particular phone number or group of phone numbers to see if it appears that there's some type of a group connection." This statement raises a number of serious questions.

As you may know, as a member of the House of Representatives, I had concerns regarding some of the authorities provided by Section 215 in the years following the initial passage of the USA PATRIOT Act. When the law was reauthorized in 2005, I was able to address some of these concerns by securing passage of bipartisan amendments that received overwhelming support. I respect and value the work of law enforcement and intelligence professionals and believe we need to give them the tools they need to keep the nation safe. However, I believe we can and must do so in a way that safeguards the rights of American citizens.

I respect the classified nature of some details, but I hope you can still provide answers to the following questions during the hearing next week. If your response must include classified information, I welcome those in written form following the hearing.

- Please explain how the FBI demonstrated the collection of such vast quantities of raw data was relevant to an authorized investigation pertaining to foreign intelligence information.
- How long does the FBI or other government entity usually retain data obtained through a Section 215 order about unconsenting U.S. citizens?
- Does the FBI or other government entity dispose of metadata if it determines the data is not relevant to the authorized investigation?
- If the government does dispose of the irrelevant data, what procedures are used to ensure there is no public disclosure of the data and how quickly is the data purged after it is determined to be irrelevant?
- What is the legal basis for retaining this data? Please cite the specific statute(s), executive order(s), and/or legal memoranda or guidelines.
- Can the FBI use the metadata obtained for a different investigation than the one upon which the 215 order was based?
- Do the minimization procedures set forth in these 215 orders typically allow for metadata retention?
- What percentage of 215 orders allow for extended metadata retention?

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeff Flake", with a long, sweeping flourish extending to the right.

JEFF FLAKE  
United States Senator