Congress of the United States
Washington, DC 20515

February 12, 2008

Modernize and Strengthen the Foreign Intelligence Surveillance Act

Dear Colleague:

The Senate has passed a FISA reform bill which will protect Americans' civil liberties and strengthen the ability of our intelligence agencies to protect Americans' lives. A bipartisan group of twenty-one state Attorneys General wrote to Senators Reid and McConnell urging support for the bill's carefully-crafted provisions that offer limited and targeted immunity for communications companies that were alleged to have cooperated with governmental requests for intelligence-related assistance.

We were very impressed by this thoughtful letter and have attached a copy for your consideration. The AGs point out that state, local and federal law enforcement agencies rely on timely assistance from communications providers. If carriers face massive litigation when they assist law enforcement, it will reverse current incentives to cooperate. In their words, this could have "potentially devastating consequences for public safety." We agree and urge that the House support FISA legislation that includes targeted carrier immunity.

We must allow our intelligence agencies to protect us from attack, while securing American liberties and privacy rights. If you would like more information about this important legislation please contact Brian Rico (Wilson) at (202) 226-5506 or Brian.Rico@mail.house.gov or Laura Abshire (Ross) at (202) 225-0771 or Laura.Abshire@mail.house.gov.

Sincerely,

Heather Wilson
Member of Congress

Mike Ross
Member of Congress

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Attorney General W.A. Drew Edmondson
Attorney General Patrick Lynch
Attorney General Bill McCollum
Attorney General Dustin McDaniel
Attorney General Thurbert Baker
Attorney General Jon Bruning
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Attorney General Tom Corbett
Attorney General Larry Long
Attorney General Mark Shurtleff
Attorney General Rob McKenna
Attorney General JB Van Hollen
Attorney General John Suthers
Attorney General Troy King
Attorney General Paul Morrison
Attorney General Kelly Ayote
Attorney General Wayne Stenehjem
Attorney General Henry McMaster
Attorney General Greg Abbott
Attorney General Bob McDonnel
Attorney General Darrell McGraw

December 11, 2007

The Honorable Harry Reid
Senate Majority Leader
Washington, DC 20510

The Honorable Mitch McConnell
Senate Minority Leader
Washington, DC 20510

Re: FISA Amendments Act of 2007 (S. 2248)

Dear Majority Leader Reid and Minority Leader McConnell:

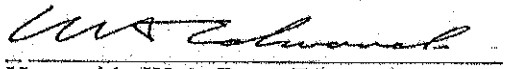
We understand that the Senate will soon consider S. 2248, the FISA Amendments Act of 2007, as recently reported by the Senate Select Committee on Intelligence. Among other things, the bill would directly address the extensive litigation that communications carriers face based on allegations that they responded to requests from the government regarding certain intelligence-gathering programs. For a number of reasons, we support these carefully crafted provisions of the bill that the Intelligence Committee adopted on a bi-partisan basis.

First, protecting carriers from this unprecedented legal exposure is essential to domestic and national security. State, local and federal law enforcement and intelligence agencies rely heavily on timely and responsive assistance from communications providers and other private parties; indeed, this assistance is utterly essential to the agencies' functions. If carriers and other private parties run the risk of facing massive litigation every time they assist the government or law enforcement, they will lack incentives to cooperate, with potentially devastating consequences for public safety.

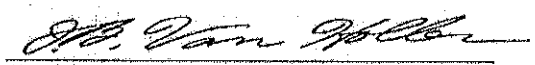
Second, the provisions of the bill are consistent with existing, long-standing law and policy. Congress has long provided legal immunity for carriers when, in reliance on government assurances of legality or otherwise in good faith, they cooperate with law enforcement and intelligence agencies. But because the government has invoked the "state secrets privilege" with respect to the subject matter of the cases, the carriers are disabled from mounting an effective defense, they are not permitted to invoke the very immunities written into the law for their benefit, and they cannot rebut the media storm that has damaged the companies' reputations and customer relationships. The immunity provisions of S. 2248 would overcome this paradox, but not simply by dismissing the pending cases outright. Instead, they would establish a thoughtful, multi-step process involving independent review by the Attorney General and the courts that, only when completed, would lead to dismissal of the claims.

Third, cases against the carriers are neither proper nor necessary avenues to assess the legality of the government's intelligence-gathering programs. Government entities or officials are already parties in over a dozen suits challenging the legality of the alleged programs, and the immunity provisions in S. 2248 would have no impact on these claims. In short, Congress should not, in a rush to hold the government accountable for alleged wrongdoing, burden these carriers with the substantial reputational damage and potentially ruinous liability that could flow from these suits. If these alleged programs were legally infirm, the government, not private actors who acted in good faith and for patriotic reasons, should answer for them.

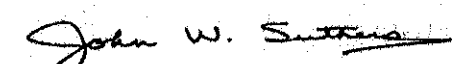
For these reasons, we urge that any FISA-reform legislation adopted by the Senate include the carrier-immunity provisions currently contained in S. 2248.



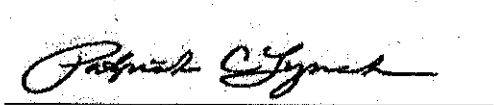
Honorable W.A. Drew Edmondson
Attorney General of Oklahoma



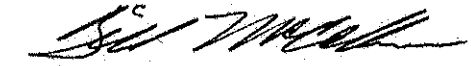
Honorable J.B. Van Hollen
Attorney General of Wisconsin



Honorable John Suthers
Attorney General of Colorado



Honorable Patrick Lynch
Attorney General of Rhode Island



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Honorable Jon Bruning
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Honorable Roy Cooper
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Honorable Henry McMaster
Attorney General of South Carolina

Honorable Tom Corbett
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Honorable Greg Abbott
Attorney General of Texas

Honorable Larry Long
Attorney General of South Dakota

Honorable Bob McDonnell
Attorney General of Virginia

Honorable Mark Shurtleff
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