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Attorney General Wayne Stenehjem
Attorney General Henry McMaster
Attorney General Greg Abbott
Attorney General Bob McDonnell
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:

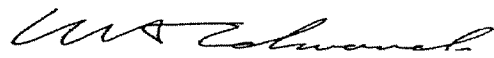
We understand that the Senate will soon consider S. 2248, the FISA Amendments Act of 2007, as recently reported by the Senate Select Committee on Intelligence. Among other things, the bill would directly address the extensive litigation that communications carriers face based on allegations that they 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.

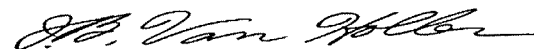
Second, the provisions of the bill are consistent with existing, long-standing law and policy. Congress has long provided legal immunity for carriers when, in reliance on government assurances of legality or otherwise in good faith, they cooperate with law enforcement and intelligence agencies. But because 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.

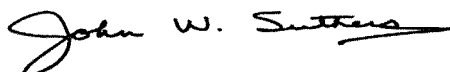
For these reasons, we urge that any FISA-reform legislation adopted by the Senate include the carrier-immunity provisions currently contained in S. 2248.



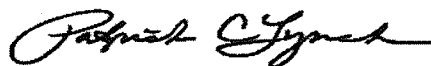
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Honorable Roy Cooper
Attorney General of North Carolina



Honorable Tom Corbett
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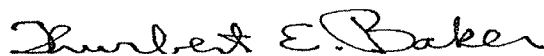
Honorable Larry Long
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Attorney General of Washington



Honorable Thurbert E. Baker
Attorney General of Georgia



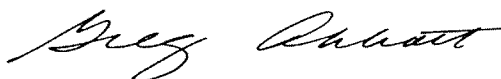
Honorable Kelly Ayotte
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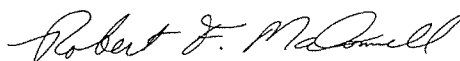
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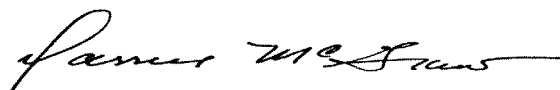
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