

~~TOP SECRET//COMINT~~ ~~-----~~ ~~//TSP//ORCON/NOFORN//MR~~

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE NATIONAL SECURITY AGENCY
TELECOMMUNICATIONS RECORDS
LITIGATION

MDL Dkt. No. 06-1791-VRW

This Document Relates to:

CLASSIFIED CERTIFICATION
OF THE ATTORNEY GENERAL
OF THE UNITED STATES

ALL ACTIONS AGAINST ELECTRONIC
COMMUNICATION SERVICE PROVIDERS
(including all AT&T, MCI/Verizon, Sprint/Nextel
BellSouth, Cingular /AT&T Mobility Defendants;
Master Consolidated Complaints (Dkts. 124, 125,
126, 455) (See Caption to Motion)

**SUBMITTED IN CAMERA,
EX PARTE**

Chief Judge Vaughn R. Walker

(U) I, Michael B. Mukasey, hereby state and declare as follows pursuant to 28 U.S.C.
§ 1746:

1. (U) I am the Attorney General of the United States and have held this office since
November 9, 2007. The purpose of this declaration is to make the certification authorized by
Section 201 of Title II of the Foreign Intelligence Surveillance Act of 1978 Amendments Act of
2008, Pub. L. No. 110-261 ("FISA Act of 2008" or "Act"), which establishes statutory
protections for electronic communication service providers ("providers") in civil actions
alleging that they have furnished assistance to an element of the intelligence community.
Section 802 of Title VIII of the FISA, as amended, now provides that "a civil action may not lie
or be maintained in a Federal or State court against any person for providing assistance to an
element of the intelligence community, and shall be promptly dismissed, if the Attorney
General certifies to the district court of the United States in which such action is pending" that

Classified Certification of Michael B. Mukasey,
Attorney General of the United States
MDL No. 06-cv-1791-VRW

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~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

1 either:

2 (1) any assistance by that person was provided pursuant to an order of the
3 Foreign Intelligence Surveillance Court ("FISC" or "FISA Court") directing such
4 assistance; or

5 (2) any assistance by that person was provided pursuant to a certification in
6 writing under Sections 2511(2)(a)(ii)(B) or 2709(b) of Title 18; or

7 (3) any assistance by that person was provided pursuant to a directive or
8 directives issued pursuant to the Protect America Act ("PAA") or the FISA Act of 2008;
9 or

10 (4) in the case of a "covered civil action" (which is defined under the Act as
11 an action alleging that a provider-defendant furnished assistance to an element of the
12 intelligence community and seeks monetary or other relief from the provider related to
13 that assistance, *see* 50 U.S.C. § 1885(5)) the assistance alleged to have been provided by
14 the electronic communications service provider was—

15 (A) in connection with an intelligence activity involving communications
16 that was—

17 (i) authorized by the President during the period
18 beginning on September 11, 2001, and ending on January
19 17, 2007; and

20 (ii) designed to detect or prevent a terrorist attack,
21 or activities in preparation for a terrorist attack, against
22 the United States; and

23 (B) the subject of a written request or directive, or a series of
24 written requests or directives, from the Attorney General or the head of
25 an element of the intelligence community (or the deputy of such person)
26 to the [provider] indicating that the activity was

27 (i) authorized by the President; and

28 (ii) determined to be lawful; or

(5) the person did not provide the alleged assistance.

See 50 U.S.C. § 1885a(a)(1)-(5). "Assistance" is defined to mean "the provision of, or the
provision of access to, information (including communication contents, communication
records, or other information relating to a customer or communication), facilities, or another
form of assistance." *See* 50 U.S.C. § 1885(1).

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~~TOP SECRET//COMINT- [REDACTED] //TSP//ORCON//NOFORN//MR~~

1 2. (U) As set forth below, I hereby certify that the claims asserted in the civil actions
2 pending in these consolidated proceedings brought against electronic communication service
3 providers fall within at least one provision contained in Section 802(a) of the FISA. In
4 addition, as also set forth below, I have concluded that disclosure of this classified certification,
5 including the basis for my certification as to particular provider-defendants, would cause
6 exceptional harm to the national security of the United States and, pursuant to Section 802(c)(1)
7 of the FISA, must therefore be reviewed *in camera*, *ex parte* by the Court. See 50 U.S.C.
8 § 1885a(c)(1).

9 3. (U) This certification is organized as follows:

10 I. (U) Summary of Allegations

11 II. (U) Summary of Certification

12 A. (U) Content Surveillance Allegations

13 1. (U) Content-Dragnet Allegations

14 2. (U) Terrorist Surveillance Program ("TSP")

15 B. (U) Communication Records Allegations

16 1. ~~(TS//SI- [REDACTED] //OC/NF)~~ Telephony Meta Data Collection

17 2. ~~(TS//SI- [REDACTED] //OC/NF)~~ Internet Meta Data Collection

18 III. (U) Certifications for Provider-Defendants

19 A. (U) Content Dragnet Allegations

20 B. (U) Post-9/11 Intelligence Activities

21
22
23 ¹ ~~(TS//SI)~~ This certification is classified TOP SECRET//COMINT- [REDACTED]
24 [REDACTED] //TSP//ORCON//NOFORN//MR and unauthorized disclosure of information
25 herein could reasonably be expected to cause exceptional harm to national security. The
26 classification markings in this declaration are explained in detail in the Classified Alexander
27 Verizon Declaration ¶¶ 7-10.

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1. ~~(TS//SI//OC/NF)~~ Presidential Authorization

2. ~~(TS//SI//OC/NF)~~ FISC Orders [REDACTED]

3. ~~(TS//SI//OC/NF)~~ PAA and FISA Act Directives [REDACTED]

C. ~~(TS//SI//OC/NF)~~ [REDACTED]

D. ~~(TS//SI//OC/NF)~~ [REDACTED]

1. ~~(TS//SI//OC/NF)~~ [REDACTED]

2. ~~(TS//SI//OC/NF)~~ [REDACTED]

3. ~~(TS//SI//OC/NF)~~ [REDACTED]

IV. (U) Harm to National Security From Disclosure of Certification.

* * * * *

4. (U) The statements made herein are based on my personal knowledge and information made available to me in the course of my official duties, including the information set forth below and any "supplemental materials" that may accompany this classified certification as defined in Section 802(b)(2) of the FISA, *see* 50 U.S.C. § 1885a(b)(2). I have

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~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

1 also met with officials of the National Security Agency ("NSA") to discuss this matter, and
2 during these meetings I have confirmed with these NSA officials that the statements herein are
3 true and accurate and have been verified with the NSA. In addition, I have reviewed the
4 classified declarations submitted for *in camera*, *ex parte* review by the Director of National
5 Intelligence ("DNI") and the Director of the NSA in *Hepting et al. v. AT&T et al.* (06-cv-
6 00672-VRW) (hereafter the *Hepting* action) and in the actions brought against the *MCI/Verizon*
7 Defendants (MDL 06-cv-1791-VRW) (hereafter the *MCI/Verizon* actions). I have also
8 reviewed the Court's decision in the *Hepting* action, which denied motions to dismiss brought
9 by the United States and the AT&T Defendants in that case. See *Hepting et al. v. AT&T et al.*,
10 439 F. Supp. 2d 974 (N.D. Cal. 2006). I have also reviewed the First Amended Complaint in
11 the *Hepting* action (hereafter "*Hepting* FAC") and the consolidated complaints against the:
12 (i) *MCI/Verizon* Defendants (Dkt. 125); (ii) *Sprint/Nextel* Defendants (Dkt. 124); (iii) *BellSouth*
13 Defendants (Dkt. 126) and *AT&T Mobility/Cingular Wireless* Defendants (Dkt. 455) (hereafter
14 the "*Verizon*," "*Sprint*," "*BellSouth*," and "*Cingular*" Complaints).²

15
16
17
18 ² **Dismissed Defendants:** I am advised that all of the provider-defendants in a fifth
19 consolidated master complaint (Dkt. 123) have now been dismissed by stipulation and,
20 accordingly, I need not provide a certification as to these defendants (T-Mobile, Comcast
21 Telecommunications, McLeod USA Telecommunications Services, and Transworld Network
22 Corp.). See Dkts. 162, 164, 184, 185. In addition, a number of Verizon entities have been
23 dismissed by stipulation and, therefore, I need not provide a certification as to these entities.
24 See Dkt. No. 230 (dismissing Celco Partnership dba Verizon Wireless; NYNEX Corp.; GTE
25 Wireless Inc.; GTE Wireless of the South, Inc; NYNEX PCS Inc.; Verizon Wireless of the East
26 LP; Verizon Internet Services Inc.; Bell Atlantic Entertainment and Information Services
27 Group; Verizon Internet Solutions Inc.; Verizon Technology Corp.; and Verizon Advanced
28 Data, Inc.). Other dismissed defendants as to which I need not provide a certification are:
Bright House Networks, LLC (see Dkt. 169); Charter Communications LLC (see Dkt. 170);
TDS Communications Solutions, Inc. (see Dkt. 85); and Embarq Corporation (see Dkt. 235).

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~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

1 5. (~~TS//SI~~ [REDACTED] ~~//TSP//OC/NF~~) Specifically, in making this certification, I have
2 also reviewed the classified supplemental materials identified below, including [REDACTED]

3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]

10 [REDACTED] In
11 addition, an official from the NSA confirmed to me that (1) the NSA has not had any [REDACTED]
12 [REDACTED]
13 [REDACTED] and (2) the NSA has not conducted content-dragnet collection as alleged in
14 various complaints in this matter, *see infra* at ¶¶ 8-9, ¶¶ 22-26.

15 I. (U) Summary of Allegations

16 6. (U) The allegations raised in these consolidated proceedings against the provider-
17 defendants are substantially similar to the allegations first raised in the *Hepting* action against
18 AT&T Defendants. *See Hepting*, 439 F. Supp. 2d at 996 (summarizing allegations). First,
19 plaintiffs allege that, following the terrorist attacks of September 11, 2001, the provider-
20 defendants assisted the NSA in dragnet collection of the content of "millions of
21 communications made or received by people inside the United States" for the purpose of
22 analyzing those communications through key word searches to obtain information about
23 possible terrorist attacks. *See Hepting* FAC ¶ 39; *Verizon* Compl. ¶ 165; *BellSouth* ¶ 64;
24 *Cingular* Compl. ¶ 53; *Sprint* Compl. ¶ 44. Second, plaintiffs also allege that the provider-
25 defendants assisted the NSA by divulging to the NSA records concerning the plaintiffs'

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1 telephone and electronic communications or by providing the NSA with access to databases
2 containing such records. *See Hepting* FAC ¶¶ 51-63; *Verizon* Compl. ¶¶ 168-71, 174-75; *Sprint*
3 Compl. ¶¶ 48-50, 53-54; *BellSouth* Compl. ¶¶ 68-70, 73-74; *Cingular* Compl. ¶¶ 57-59, 62-63.
4 Plaintiffs allege that the foregoing assistance and activities were undertaken without judicial
5 authorization and in violation of federal statutory provisions and the First and Fourth
6 Amendments to the Constitution (as well as various state law and constitutional provisions).
7 *See Hepting* FAC ¶¶ 2, 81, 83, 90-149; *Verizon* Compl. ¶¶ 177, 201-89; *Sprint* Compl. ¶¶ 56,
8 72-141; *BellSouth* Compl. ¶¶ 76, 101-216; *Cingular* Compl. ¶¶ 65, 90-321. In sum, plaintiffs
9 allege that the provider-defendants furnished "assistance" (as defined in Section 801(1) of the
10 FISA) to the Government in form of: (1) the alleged content-dragnet; and (2) the alleged
11 collection of records about telephone and electronic communications.

12 II. (U) Summary of Certification

13 7. ~~(TS//SI~~ [REDACTED] ~~//TSP//OC/NF)~~ For the convenience of the Court, this section
14 provides a summary of the certifications that I make herein [REDACTED]
15 [REDACTED] As
16 explained below, [REDACTED]
17 [REDACTED]
18 [REDACTED] the government did *not* engage in the dragnet collection of communications
19 that plaintiffs allege, [REDACTED]

20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED] the NSA in the collection of the content of certain one-end international
24 telephone and Internet communications where the NSA had a reasonable ground to believe that
25 the communicant was a member of a group that engages in or is preparing to engage in acts of

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~~TOP SECRET//COMINT [REDACTED]//TSP//ORCON/NOFORN//MR~~

1 terrorism—an activity later referred to as the “Terrorist Surveillance Program” (“TSP”).
2 Second, [REDACTED] the collection of non-
3 content information about communications in the form of (a) telephony meta data and
4 (b) Internet meta data—information vital to detecting [REDACTED] contacts of terrorist
5 communications. As summarized immediately below, and as described in more detail in
6 section III, all such assistance falls within at least one provision contained in Section 802(a) of
7 the FISA. In addition, for the Court’s convenience, I have included at pages [REDACTED]
8 summarizing this certification.³

9 **A. (U) Content Surveillance Allegations**

10 1. (U) *Content-Dragnet Allegations*

11 8. (U) The plaintiffs have alleged a content surveillance program of “far greater scope”
12 than the post-9/11 program confirmed by the President—called the “Terrorist Surveillance
13 Program” (“TSP”)—in which the President authorized the NSA to intercept certain “one-end”
14 international communications to or from the United States that the Government reasonably
15 believed involved a member or agent of al Qaeda or affiliated terrorist organization. *See*
16 *Hepting*, 439 F. Supp. 2d at 994. While confirming the existence of the TSP, the Government
17 has denied the existence of the alleged dragnet collection on the content of plaintiffs’
18

19
20 ³ ~~(TS//SI [REDACTED]//TSP//OC/NF)~~ One master consolidated complaint against the
21 *BellSouth* Defendants alleges that the provision of telephony and Internet content and records of
22 communications to the NSA began “sometime after February 1, 2001” (*i.e.*, prior to the 9/11
23 attacks). *See* Dkt. 126, ¶ 37. The other consolidated complaints appear to challenge alleged
24 assistance only after the 9/11 attacks. *See Hepting* FAC ¶ 32; *Sprint* Compl. ¶ 17; *Cingular*
25 Compl. ¶ 26; *see also MCI/Verizon* Compl. ¶¶ 139, 149, 169-70 (citing allegations of post-9/11
26 conduct). [REDACTED]
27 [REDACTED]
28 [REDACTED]

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~~TOP SECRET//COMINT [REDACTED]//TSP//ORCON/NOFORN//MR~~

~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

1 communications. *See id.* at 996; *see also* Public Declaration of Lt. Gen. Keith Alexander,
2 Director of the National Security Agency, in the *Verizon/MCI* Actions (Dkt. 254) ¶ 17. As set
3 forth below, specific information demonstrating that the alleged content dragnet has not
4 occurred cannot be disclosed on the public record without causing exceptional harm to national
5 security. However, because there was no such alleged content-dragnet, no provider participated
6 in that alleged activity. **Each of the provider-defendants is therefore entitled to statutory**
7 **protection with respect to claims based on this allegation pursuant to Section 802(a)(5) of**
8 **the FISA, *see* 50 U.S.C. § 1885a(a)(5).**

9 2. (U) *Terrorist Surveillance Program*

10 9. (U) While the plaintiffs do not appear to challenge the provider-defendants' alleged
11 assistance to the NSA in the conduct of the publicly acknowledged TSP, my certification
12 nonetheless also encompasses whether or not any provider-defendant assisted the NSA with
13 that activity. Specifically, I certify with respect to any assistance with the TSP that the
14 provider-defendants are entitled to statutory protection based on at least one of the provisions
15 contained in Section 802(a)(1) to (5) of the FISA, which includes the possibility that a provider
16 defendant did not provide any assistance. *See* 50 U.S.C. § 1885a(a)(1)-(5). As set forth below,
17 disclosure of the basis for my certification with respect to any alleged assistance furnished by
18 particular provider-defendants under the TSP would cause exceptional harm to national security
19 and is therefore encompassed within this classified certification submitted for *ex parte*, in
20 camera review pursuant to Section 802(c)(1) of the FISA, 50 U.S.C. § 1885a(c)(1)

21 10. ~~(TS//SI~~ [REDACTED] ~~//TSP//OC/NF)~~ [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

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~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]

13

14 ⁴ ~~(TS//SI~~ [REDACTED] ~~//TSP//OC/NF)~~ The term "content" is used herein to refer to the
15 substance, meaning, or purport of a communication, as defined in 18 U.S.C. § 2510(8), as
16 opposed to the type of addressing or routing information referred throughout this declaration as
"meta data."

17 ⁵ (U) Section 802(a)(4) of the FISA provides protection for electronic communications
18 service providers alleged to have provided assistance to an element of the intelligence
19 community pursuant to a written request from the Attorney General or the head of an element
on the intelligence community, or the deputy of such person. See 50 U.S.C. § 1885a(a)(4).

20 ⁶ ~~(TS//SI~~ [REDACTED] ~~//TSP//OC/NF)~~ [REDACTED]

21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

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1 11. ~~(TS//SI//~~ [REDACTED] ~~//TSP//OC/NF)~~ [REDACTED]

2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 12. ~~(TS//SI//TSP//OC/NF)~~ On January 10, 2007, the FISA Court issued orders
9 authorizing the Government to conduct certain electronic surveillance that had been occurring
10 under the TSP. The FISA Court orders were implemented on January 17, 2007, and
11 beginning on that date, [REDACTED]

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 13. ~~(TS//SI//OC/NF)~~ Beginning in August 2007, [REDACTED]
16 [REDACTED] the collection of telephony and Internet content where the
17 target was located outside the United States pursuant to directives issued by the Director of
18 National Intelligence and the Attorney General under the Protect America Act, P.L. 110-55.
19 [REDACTED]
20 [REDACTED]

21 14. ~~(TS//SI//OC/NF)~~ Beginning in [REDACTED] 2008, expiring directives that had been
22 issued under the PAA for content surveillance of overseas targets (including surveillance of
23 specific [REDACTED] overseas) are being replaced by new directives for such surveillance
24 issued pursuant to Title I of the FISA Act of 2008. This Title establishes, *inter alia*, new
25 authority and procedures under which the Attorney General and Director of National

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28 ~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

1 Intelligence may authorize, for up to one year, the targeting of non-U.S. persons overseas
2 without individual court orders, subject to certain targeting and minimization procedures
3 approved by the FISC. *See generally* 50 U.S.C. §§ 1881a-1881g (as added by the FISA Act of
4 2008, P.L. 110-261). [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 **B. (U) Communication Records Allegations**

9 15. (U) My certification also encompasses whether or not any provider defendant
10 assisted the NSA through the provision of records concerning telephone and electronic
11 communications. In particular, I certify that the provider-defendants are entitled to statutory
12 protection based on at least one of the provisions contained in Section 802(a)(1) to (5) of the
13 FISA, which includes the possibility that a provider defendant did not provide any assistance.
14 *See* 50 U.S.C. § 1885a(a)(1)-(5). As set forth below, disclosure of the basis for my certification
15 with respect to any alleged assistance furnished by particular provider-defendants to the NSA
16 concerning the communication records allegations would cause exceptional harm to national
17 security and is therefore encompassed within this classified certification submitted for *ex parte*,
18 *in camera* review pursuant to Section 802(c)(1) of the FISA, 50 U.S.C. § 1885a(c)(1).

19 16. ~~(TS//SI~~ [REDACTED] ~~//TSP//OC/NF)~~ [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED] As described below, meta data collection
24 facilitates the analysis of contacts [REDACTED] of suspected terrorist communications and, thus,
25 is also designed to detect or prevent a terrorist attack. In contrast to public confirmation of the

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1 existence of the TSP, the existence of NSA's collection of communication records has not been
2 officially confirmed or denied despite speculation in the media, as the Court has noted. *See*
3 *Hepting*, 439 F. Supp. 2d at 997. As also described below, [REDACTED]
4 [REDACTED] subject
5 to orders of the FISA Court originally issued in July 2004 and May 2006, subsequently
6 renewed, and still in effect.

7 1. ~~(TS//SI~~ [REDACTED] ~~//OC/NF)~~ *Telephony Meta Data Collection*

8 17. ~~(TS//SI~~ [REDACTED] ~~//OC/NF)~~ [REDACTED]
9 [REDACTED]

10 [REDACTED] the bulk collection of *telephony* meta data (also referred to
11 as "call records")—information that reflects non-content information such as the date, time, and
12 duration of telephone calls, as well as the phone numbers used to place and receive the calls.

13 [REDACTED]
14 [REDACTED] meta data collection was authorized by the President, was designed to
15 detect or prevent a further terrorist attack on the United States, and had been determined to be
16 lawful. [REDACTED]

17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 7. ~~(TS//SI~~ [REDACTED] ~~//TSP//OC/NF)~~ [REDACTED]
25 [REDACTED]
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1 2. ~~(TS//SI~~ [REDACTED] ~~//OC/NF)~~ *Internet Meta Data Collection*

2 18. ~~(TS//SI~~ [REDACTED] ~~//OC/NF)~~ [REDACTED]

3 [REDACTED]
4 [REDACTED] the bulk collection of non-content *Internet* meta data,
5 specifically the header/router/addressing information, such as the "to," "from," "cc," and "bcc"
6 lines, as opposed to the body or "re" lines, of a standard email. [REDACTED]

7 [REDACTED] authorized by the President, was designed to detect or
8 prevent a further terrorist attack on the United States, and had been determined to be lawful.

9 [REDACTED]
10 [REDACTED]
11 [REDACTED] As explained
12 further below, the President's authorization for the bulk collection of Internet meta data ceased
13 [REDACTED] and, after application by the Government to the FISC Court, was supplanted
14 by a July 2004 FISC Order that directed [REDACTED] bulk Internet meta
15 data to the NSA. [REDACTED]

16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
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28 ~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

19. ~~(TS//SI~~ [REDACTED] ~~//TSP//OC/NF)~~ [REDACTED]

20. ~~(TS//SI~~ [REDACTED] ~~//TSP//OC/NF)~~ [REDACTED]

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~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

1 III. (U) Certifications for Provider-Defendant

2 21. ~~(TS//SI~~ [REDACTED] ~~//TSP//OC/NF)~~ This section of my certification provides further
3 detail concerning whether particular provider-defendants furnished assistance to the
4 Government with respect to the activities authorized by the President after the 9/11 attacks; [REDACTED]

5 [REDACTED]
6 [REDACTED] I first discuss whether
7 assistance was provided with respect to plaintiffs' content-dragnet allegations. I then discuss
8 [REDACTED] post-9/11 intelligence activities authorized by the
9 President to detect or prevent a further terrorist attack on the United States: (i) the TSP; (ii) the
10 bulk collection of telephony meta data; and (iii) the bulk collection of Internet meta data. I then
11 make my certifications [REDACTED]

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 A. (U) Content Dragnet Allegations

21 22. (U) As noted above, the Government has previously denied plaintiffs' allegations
22 that it engaged in a massive dragnet that sweeps up the content of millions of domestic and
23 international communications and subjects them to analysis through key word searches. I
24 certify that none of the provider-defendants assisted the NSA in this alleged (but non-
25 existent) activity, and therefore all of the provider-defendants are entitled to statutory

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27 Attorney General of the United States
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28 ~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~ [REDACTED]

~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

1 protection under Section 802(a)(5) of the FISA, 50 U.S.C. § 1885a(a)(5).

2 23. (~~TS//SI//TSP//OC/NF~~) The Government has previously set forth classified
3 operational facts and information explaining that the TSP did not involve the alleged content-
4 dragnet. See Classified Alexander Verizon Declaration ¶¶ 54-62. In sum, the NSA's collection
5 efforts under the TSP were directed at telecommunications facilities that the NSA had
6 reasonable grounds to believe carry the "one-end" foreign communications of members or
7 agents of al Qaeda or affiliated terrorist organizations. With respect to telephone
8 communications, [REDACTED]

9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]

13 [REDACTED] With respect to Internet communications, [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

23 24. (~~TS//SI//TSP//OC/NF~~) NSA also took specific steps in the actual TSP interception
24 process to minimize the risk that the communications of non-targets were intercepted. See
25 Classified Alexander Verizon Declaration ¶ 59. With respect to telephone communications,
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27 Attorney General of the United States
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28 ~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~ [REDACTED]

~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

1 specific telephone numbers of an individual who was reasonably believed to be a member or
2 agent of al Qaeda or an affiliated terrorist organization were entered into collection devices
3 [REDACTED] so that the only
4 communications intercepted were those to or from the targeted number. For Internet
5 communications, the NSA used identifying information obtained through its analysis of the
6 target, such as email addresses [REDACTED] to target for collection the communications of
7 individuals reasonably believed to be members or agents of al Qaeda or an affiliated terrorist
8 organization. *See id.*⁸

9 25. ~~(TS//SI//TSP//OC/NF)~~ [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16
17

18 ⁸ ~~(TS//SI//TSP//OC/NF)~~ [REDACTED]
19 [REDACTED]
20

21 *See Classified Alexander Verizon Decl.* ¶ 59, n.19. [REDACTED] in this acquisition process NSA did not
22 search the content of the communications [REDACTED] with “key words” other than
23 the targeted selectors themselves. *See id.* Rather, the NSA targeted for collection only email
24 addresses [REDACTED] associated with suspected members or agents of al
25 Qaeda or affiliated terrorist organizations, or communications in which such [REDACTED]
26 [REDACTED] were mentioned. *See id.* In addition, due to technical limitations of the hardware
27 and software, incidental collection of non-target communications has occurred, and in such
28 circumstances the NSA applied its minimization procedures to ensure that communications of
non-targets were not disseminated. *See id.*

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~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]

7 26. (~~TS//SI//TSP//OC/NF~~) The foregoing operational details of the TSP activities
8 cannot be disclosed in order to disprove the plaintiffs' content-drag-net allegations.
9 Nonetheless, plaintiffs' allegations with respect to a content-drag-net are wrong; none of the
10 provider-defendants furnished such assistance to the Government; and therefore each of the
11 provider-defendants is entitled to statutory protection under Section 802(a)(5) of the FISA with
12 respect to such alleged assistance. See 50 U.S.C. § 1885a(a)(5).

13 **B. (U) Post-9/11 Intelligence Activities**

14 1. (~~TS//SI//TSP//OC/NF~~) *Presidential Authorization*

15 27. (~~TS//SI~~ [REDACTED] ~~//TSP//OC/NF~~) On October 4, 2001, in response to the 9/11
16 attacks, the President directed the Secretary of Defense, who in turn authorized the National
17 Security Agency, to undertake three interrelated intelligence activities to enhance the United
18 States' ability to detect or prevent another catastrophic terrorist attack. First, as discussed
19 above, the President authorized the NSA to intercept the content of certain one-end telephony
20 and Internet international communications (*i.e.*, communications to or from the United States)
21 necessary to identify members of international terrorist cells in the United States and prevent
22 future terrorist attacks against the United States. In December 2005, after media reports
23 concerning alleged NSA activities, the President publicly confirmed that he had authorized the
24 interception of international one-end communications where a party to such communication is a
25 member or agent of al Qaeda or an affiliated terrorist organization. See Classified Alexander
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28 ~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

1 Verizon Declaration ¶¶ 28, 54-60. Again, this activity was publicly referred to as the Terrorist
2 Surveillance Program.⁹

3 28. (~~TS//SI~~ [REDACTED] ~~//TSP//OC/NF~~) In addition to the TSP, the President also authorized
4 related activities that have not been officially confirmed by the Government—the collection of
5 non-content information about communications. In particular, the President authorized the bulk
6 collection of certain telephony and Internet meta data. As previously explained by the NSA, the
7 bulk collection of meta data was essential to allow the utilization of sophisticated analytical
8 tools by the NSA for tracking the contacts [REDACTED] of al Qaeda and its
9 affiliates. See Classified Alexander Verizon Declaration ¶¶ 69-74. NSA's analysis of bulk
10 meta data is designed to address the "extreme measures" taken by al Qaeda members and
11 affiliates to avoid detection [REDACTED]

12 [REDACTED] See *id.* ¶ 74.
13 While only a small fraction of this meta data is queried by NSA analysts with selectors related
14 to al Qaeda targets, see *id.* ¶¶ 31-32, maintaining an archive of bulk meta data is essential to
15 track terrorist targets that seek to evade surveillance through such methods, see *id.* ¶¶ 70, 72,
16 74.

17 29. (~~TS//SI~~ [REDACTED] ~~//TSP//OC/NF~~) [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 [REDACTED] The President's first authorization was
22 [REDACTED]

23 ⁹ (~~TS//SI~~ [REDACTED] ~~//TSP//OC/NF~~) As prior declarations in these proceedings have
24 indicated, the Presidential authorizations were modified over time and during certain periods
25 authorized other activities. See Classified Alexander Verizon Declaration ¶ 62; Classified
26 Alexander Shubert Declaration at 14-15 n.5.

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~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

1 signed on October 4, 2001, [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 30. ~~(TS//SI~~ [REDACTED] ~~//TSP//OC/NF)~~ [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12

13 _____

14 ¹⁰ ~~(TS//SI~~ [REDACTED] ~~//TSP//OC/NF)~~ [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 ¹¹ ~~(TS//SI~~ [REDACTED] ~~//TSP//OC/NF)~~ [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 ¹² (U) [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]

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28 ~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

~~TOP SECRET//COMINT-[REDACTED]//TSP//ORCON/NOFORN//MR~~

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~~TOP SECRET//COMINT-[REDACTED]//TSP//ORCON/NOFORN//MR~~

TOP SECRET//COMINT- [REDACTED] //TSP//ORCON/NOFORN//MR

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32. (TS//SI- [REDACTED] //TSP//OC/NF) [REDACTED]

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(TS//SI- [REDACTED] //TSP//OC/NF) [REDACTED]

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(TS//SI//TSP//OC/NF) [REDACTED]

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(TS//SI- [REDACTED] //TSP//OC/NF) [REDACTED]

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TOP SECRET//COMINT- [REDACTED] //TSP//ORCON/NOFORN//MR

~~TOP SECRET//COMINT- [REDACTED]//TSP//ORCON/NOFORN//MR-~~

1 33. ~~(TS//SI- [REDACTED]//TSP//OC/NF)~~ After the President discontinued the bulk
2 collection of Internet meta data, [REDACTED]

3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED] The next Presidential authorization [REDACTED] was
8 approved as to form and legality by the Attorney General and authorized (i) content surveillance
9 of certain one-end international calls believed to involve members or agents of al Qaeda; (ii) the
10 bulk collection of telephony meta data, and (iii) the [REDACTED] collection of Internet meta data
11 focused on al Qaeda-related communications. Each subsequent Presidential authorization was
12 approved as to form and legality by the Attorney General or Acting Attorney General and,
13 accordingly [REDACTED]

14 [REDACTED] indicated that the Attorney General had approved the President's
15 authorization as to form and legality, and described in more detail the three distinct types of
16 requested assistance in order to detect or prevent further terrorist attacks within the United
17 States: (i) the collection of one-end international communications for which NSA has
18 determined that there are reasonable grounds to believe that a party to such communication is a
19 group or agent of a group engaged in or preparing to engage in international terrorism; (ii) the
20 [REDACTED]

21 [REDACTED]

22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

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28 ~~TOP SECRET//COMINT- [REDACTED]//TSP//ORCON/NOFORN//MR-~~

~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

1 collection of aggregated telephony call record information (but not the content of
2 communications) including dialing-type data to enable NSA to identify communicants
3 reasonably believed to be involved in international terrorism or activities in preparation
4 therefor; and (iii) the collection of header/router/ addressing-type information related to non-
5 telephony communications limited to communications for which there is reason to believe a
6 communicant is involved in international terrorism or activities in preparation therefor. [REDACTED]

7 [REDACTED]
8 34. ~~(TS//SI~~ [REDACTED] ~~//TSP//OC/NF)~~ In January 2006, the Attorney General [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 16 ~~(TS//SI~~ [REDACTED] ~~//TSP//OC/NF)~~ [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]

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28 ~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

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2. ~~(TS//SI//OC/NF)~~ FISC Orders [REDACTED]

35. ~~(TS//SI//OC/NF)~~ During [REDACTED] 2004, the Government prepared and submitted an application to the FISA Court to continue the bulk collection of Internet meta data pursuant to court order. The FISC granted the Government's application and, thus, beginning in July 2004, the bulk collection of Internet meta data was conducted pursuant to an Order of the FISC authorizing the use of a pen register and trap and trace device ("FISC Pen Register Order") (Exhibit G, Tabs 1-5). See 18 U.S.C. § 3127

¹⁷ ~~(TS//SI//OC/NF)~~ [REDACTED]

¹⁸ ~~(TS//SI//OC/NF)~~ [REDACTED]

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~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

1 (defining "pen register" and "trap and trace device"). See Classified Alexander *Verizon*
2 Declaration ¶ 31. Pursuant to the FISC Pen Register Order, which has been reauthorized
3 approximately every 90 days after it was first issued, NSA was authorized to collect in bulk
4 [REDACTED], meta data associated with electronic communications

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 [REDACTED] The NSA was authorized to query the
13 archived meta data collected pursuant to the FISC Pen Register Order using Internet addresses
14 for which there were facts giving rise to a reasonable, articulable suspicion that the email
15 address was associated [REDACTED]. See Classified
16 Alexander *Verizon* Declaration ¶ 31. The FISC Pen Register Order was most recently
17 reauthorized on September 17, 2008, and requires continued assistance by the providers through
18 December 12, 2008. See Exhibit G, Tab 7.

19 36. ~~(TS//SI~~ [REDACTED] ~~//OC/NF)~~ Beginning in May 2006, the NSA's bulk collection of
20 telephony meta data, previously authorized by the President, was authorized by order of the
21 FISC ("FISC Telephone Records Order"). See Classified Alexander *Verizon* Declaration ¶ 32
22 and Exhibit H, [REDACTED] Like the FISC Pen Register Order, the FISC Telephone
23 Records Order was reauthorized approximately every 90 days. Based on the finding that
24 reasonable grounds existed that the production was relevant to efforts to protect against
25 international terrorism, the Order required [REDACTED] to produce to the

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28 ~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

~~TOP SECRET//COMINT-[REDACTED]//TSP//ORCON/NOFORN//MR~~

1 NSA "call detail records" or "telephony metadata" pursuant to 50 U.S.C. § 1861[c] (authorizing
2 the production of business records for, *inter alia*, an investigation to protect against
3 international terrorism). Telephony meta data was compiled from call detail data maintained by
4 the providers in the ordinary course of business that reflected non-content information such as
5 the date, time, and duration of telephone calls, as well as the phone numbers used to place and
6 receive the calls. The NSA queried the data solely with identified telephone numbers for which
7 there were facts giving rise to a reasonable, articulable suspicion that the number was
8 associated [REDACTED]. See Classified Alexander Verizon
9 Declaration ¶ 32. The FISC Telephone Records Order was most recently reauthorized on
10 August 19, 2008, and requires continued assistance by the providers through December 12,
11 2008. See Exhibit H, Tab 5.

12 37. (~~TS//SI-[REDACTED]//TSP//OC/NF~~) On January 10, 2007, the FISC issued orders
13 authorizing the Government to conduct certain electronic surveillance that had been occurring
14 under the TSP. See Classified Submission of the United States (January 11, 2007) (submitted
15 for *in camera*, *ex parte* review). Those Orders [REDACTED]
16 [REDACTED]
17 [REDACTED] the "Foreign Telephone and
18 Email Order" (Exhibit I, Tab 1), which authorized, *inter alia*, electronic surveillance of
19 telephone and Internet communications carried over particularly listed facilities, where the
20 Government determined that there was probable cause to believe that (1) one of the
21 communicants is a [REDACTED], and
22 (2) the communication is to or from a foreign country (*i.e.*, a one-end foreign communication to
23 or from the United States). See Classified Alexander Verizon Decl. ¶ 29. The telephone
24 numbers and email addresses to be targeted under the Foreign Telephone and Email Order were
25 further limited to those that NSA reasonably believed were being used by persons outside the
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28 ~~TOP SECRET//COMINT-[REDACTED]//TSP//ORCON/NOFORN//MR~~ [REDACTED]

~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

1 United States. *See id.* Subject to reporting requirements, this Order authorized the Government
2 to target for collection communications related to new [REDACTED] foreign selectors used
3 by terrorists without having to seek advance approval from the FISA Court for each target. *See*
4 *id.* ¶ 81. The FISC Orders were implemented on January 17, 2007. Thereafter, any electronic
5 surveillance that was occurring as part of the TSP became subject to the approval of the FISA
6 Court and the President determined not to reauthorize the TSP.¹⁹ *See id.* ¶ 30.

7 38. ~~(TS//SI//OC/NF)~~ [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 [REDACTED] Also on April 5, 2007, the FISC extended the Foreign Telephone and Email
13 Order and, after a period of consultation with the Government, approved a modified version of
14 that Order on May 31, 2007. *See* Exhibit I, Tab 7. That revised order authorized the electronic
15 surveillance of [REDACTED] foreign telephone numbers and email addresses based on
16 the FISC's determination that there is probable cause to believe that specific facilities targeted
17 in the Order were used by [REDACTED]
18 [REDACTED]

19 Pursuant to FISA provisions that allow "roving" or "after acquired" surveillance, *see* 50 U.S.C.
20 § 1805(c)(1)(B); § 1805(c)(3), the Order authorized the Government to initiate electronic
21 surveillance of new foreign telephone numbers and Internet addresses that the NSA discovered
22
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24 ¹⁹ ~~(TS//SI//TSP//OC/NF)~~ The President's final TSP authorization expired on February 1,
25 2007, but as indicated above, as of January 17, 2007, any electronic surveillance that had been
occurring under the TSP was now occurring pursuant to Orders of the FISC.

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28 ~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

1 were used by [REDACTED] without obtaining an individual court order
2 in advance.²⁰

3 3. ~~(TS//SI//OC/NF)~~ PAA and FISA Act Directives [REDACTED]
4 [REDACTED]

5 39. ~~(TS//SI//OC/NF)~~ The Foreign Telephone and Email Order remained in effect until
6 the Protect America Act ("PAA") was enacted in August 2007.²¹ The PAA amended the FISA
7 to facilitate the acquisition of foreign intelligence information concerning persons reasonably
8 believed to be outside the United States by eliminating "the requirement of a court order to
9 collect foreign intelligence information about information about targets located overseas." See
10 S. Rep. No. 110-209, 110th Cong., 1st Sess., at 2, 5-6 (2007). Under the PAA, the FISA's
11 definition of "electronic surveillance" was clarified to exclude "surveillance directed at a person
12 reasonably believed to be located outside the United States." 50 U.S.C. § 1805A. The PAA
13 also authorized the DNI and the Attorney General to jointly "authorize the acquisition of
14 foreign intelligence information concerning persons reasonably believed to be outside the
15 United States" for up to one year, *id.* § 1805B(a), and to issue directives to communications
16 service providers requiring them to "immediately provide the Government with all information,
17 facilities, and assistance necessary to accomplish the acquisition" of necessary intelligence
18 information, *id.* § 1805B(e). [REDACTED]
19

20 ²⁰ ~~(TS//SI//NF/OC)~~ When the Government first sought to renew the January 2007 Foreign
21 Telephone and Email Order, a different FISC Judge heard the matter and adopted a different
22 legal theory that relied on different grounds than the January 2007 Order. See Classified
Alexander Declaration in *Shubert* ¶ 68.

23 ²¹ ~~(TS//SI//OC/NF)~~ [REDACTED]
24 [REDACTED]
25 [REDACTED]

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28 ~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

1 [REDACTED]
2 [REDACTED]
3 40. (~~TS//SI//OC/NF~~) Beginning in [REDACTED] 2008, expiring directives that had been
4 issued under the PAA for content surveillance of overseas targets (including surveillance of
5 specific [REDACTED] targets overseas) are being replaced by new directives for such surveillance
6 issued pursuant to the FISA Act of 2008. [REDACTED]

7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 C. (~~TS//SI~~ [REDACTED] ~~//TSP//OC/NF~~) [REDACTED]
11 [REDACTED]

12 41. (U) Based on the foregoing, and pursuant to Section 802(a) of the FISA, 50 U.S.C.
13 §1885a(a), I hereby make the following certifications with respect to each of the electronic
14 service communication provider-defendants in this proceeding.
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 22 (~~TS//SI//TSP//OC/NF~~) The content surveillance activities that evolved from the
21 presidentially-authorized TSP to the FISC Foreign Telephone and Email Order, to the directives
22 issued under the PAA and, ultimately, to the directives that are now being issued pursuant to
23 the FISA Act of 2008, are directed at undertaking surveillance on numerous multiple targets
24 overseas without the need to obtain advance court approval for each target. Thus, while the
25 scope of each authorization varied, the goal of establishing a new mechanism to rapidly
26 undertake surveillance on multiple foreign targets remained the same under each authority. [REDACTED]
27 [REDACTED]

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~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

[[Page(s) Redacted]]

~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

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[REDACTED]

IV. (U) Harm to National Security From Disclosure of This Certification.

79. (U) Section 802(c)(1) of the FISA, as amended, provides that if the Attorney General attests in a declaration that disclosure of a certification under Section 802 of the Act, or any supplemental materials submitted therewith (if any), would harm the national security of the United States, the Court shall review the certification *ex parte*, and *in camera*. See 50

³⁵ ~~(TS//SI~~ [REDACTED] ~~//TSP//OC/NF)~~
[REDACTED]

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~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~ [REDACTED]

~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

1 U.S.C. § 1885a(c)(1). I hereby make the declaration required by this provision with respect to
2 the contents of this classified certification. In sum, I have determined that disclosure of this
3 classified certification, including the basis of my certification for particular provider
4 defendants, would cause exceptional harm to the national security of the United States. I
5 concur with the judgment of the Director of National Intelligence and the Director of the NSA
6 previously set forth for the Court in their classified declarations (referenced above), as well as
7 with the conclusion of the Senate Select Committee on Intelligence, that disclosure of the
8 identities of persons alleged to have provided assistance to the Government on intelligence
9 matters, as well as disclosure of activities in which the Government is alleged to have been
10 engaged, and the details of such activities, are properly protected as intelligence sources and
11 methods. *See* S. Rep. No. 110-209, at 10 (2007), Report of the Senate Select Committee on
12 Intelligence to accompany S. 2248, Foreign Intelligence Surveillance Act of 1978 Amendments
13 of 2007. (Exhibit No. 1 to United States' Motion to Dismiss or for Summary Judgment).

14 80. ~~(TS//SI~~ [REDACTED] ~~//TSP//OC/NF)~~ [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

26 Classified Certification of Michael B. Mukasey,
27 Attorney General of the United States
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28 ~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~ [REDACTED]

~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

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81. ~~(TS//SI~~ [REDACTED] ~~//TSP//OC/NF)~~

82. ~~(TS//SI~~ [REDACTED] ~~//TSP//OC/NF)~~ [REDACTED]

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~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

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[REDACTED]

83. ~~(TS//SI~~ [REDACTED] ~~//TSP//OC/NF)~~

[REDACTED]

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~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

[REDACTED]

~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

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[REDACTED]

84. ~~(TS//SI~~ [REDACTED] ~~//TSP//OC/NF)~~ *Disclosure of Specific Intelligence Sources and Methods:* This certification also describes specific intelligence activities concerning the collection of telephony and Internet meta data that have not previously been disclosed or confirmed by the Government, as well as classified operational details of the TSP content interception activity that have not been publicly disclosed notwithstanding public confirmation of the existence of that program. For example, disclosure of the limited nature and scope of TSP set forth in this certification [REDACTED] [REDACTED] would reveal operational details about that program that would assist the targets of NSA surveillance in ascertaining whether, when, and to what extent their communications may have been compromised under the TSP and may still be compromised, and lead them to take further steps to avoid particular facilities and modes of communication in order to evade surveillance. See Classified Alexander *Verizon* Declaration ¶¶ 55-67.

85. ~~(TS//SI~~ [REDACTED] ~~//OC/NF)~~ In addition, disclosure and confirmation of the bulk collection of Internet and telephony meta data set forth in this certification would also cause exceptional harm to national security. The bulk collection of non-content meta data information has enabled the NSA to use critical and unique analytical capabilities to track the contacts [REDACTED] terrorist organizations. As explained by the Government previously in detail, see Classified Alexander Classified Certification of Michael B. Mukasey, Attorney General of the United States MDL No. 06-cv-1791-VRW

~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

~~TOP SECRET//COMINT [REDACTED]//TSP//ORCON/NOFORN//MR~~

1 Verizon Declaration ¶¶ 70-71, meta-data collection allows the NSA to use two highly
2 sophisticated tools known as "contact chaining" and [REDACTED] Contact-chaining
3 allows the NSA to identify telephone numbers and email addresses that have been in contact
4 with known [REDACTED] numbers and addresses; in turn, those contacts can be assessed
5 and considered for immediate query and analysis as new [REDACTED] numbers and
6 addresses are identified. *See id.* ¶ 71. Obtaining the meta data in bulk, moreover, allows the
7 NSA not only to track the contacts made by a particular telephone number or email address
8 from a certain point in time going forward, but also to trace historically the contacts made with
9 that number or address. *See id.*

10 86. ~~(TS//SI [REDACTED]//OC/NF)~~ Beyond this, through an analysis of meta data, NSA
11 analysts can discern the [REDACTED]

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 87. ~~(TS//SI [REDACTED]//OC/NF)~~ [REDACTED]

25 [REDACTED]
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28 ~~TOP SECRET//COMINT [REDACTED]//TSP//ORCON/NOFORN//MR~~

~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
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6 [REDACTED]
7 88. ~~(TS//SI//OC/NF)~~ *Disclosure of Ongoing Activities Authorized Under the FISA:*
8 This certification also discloses the existence of ongoing intelligence activities that originated
9 in some fashion in post-9/11 presidentially-authorized activities but which were continued
10 pursuant to orders of the FISC, under directives authorized under the Protect America Act, or
11 pursuant to the FISA Act of 2008. The harm of revealing such intelligence activities, [REDACTED]
12 [REDACTED] should be self-evident: particular
13 ongoing activities to detect or prevent terrorist attacks would be exposed, confirming to
14 adversaries, including individuals and entities associated with [REDACTED] as to how the
15 Government is attempting to intercept and analyze their communications and detect their
16 presence and intentions. See Classified Alexander Verizon Declaration ¶¶ 78-79. In addition,
17 any attempt to delineate between [REDACTED] for certain
18 periods of time under overlapping or consecutive authority—[REDACTED]
19 [REDACTED] based on presidential authorization, then based on [REDACTED]
20 [REDACTED] FISC Orders, PAA Directives, or FISA Act of 2008 Directives—would
21 necessarily risk the disclosure of intelligence activities that were and still are being undertaken
22 pursuant to legal authority that is not being challenged in this case, and would therefore risk the
23 loss of intelligence being obtained through those activities.

24 89. ~~(TS//SI~~ [REDACTED] ~~//TSP//OC/NF)~~ [REDACTED]
25 [REDACTED]

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28 ~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~ [REDACTED]

~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

(U) Conclusion

90. (U) For the foregoing reasons, pursuant to Section 802(a) of the FISA, I hereby certify that the claims asserted in the civil actions pending in these consolidated proceedings against the electronic communication service provider-defendants fall within at least one provision contained in Section 802(a)(1)-(5) of the FISA that would entitle these defendants to statutory protection from the pending civil actions. See 50 U.S.C. § 1885a(a)(1)-(5). In addition, pursuant to Section 802(c)(1) of the FISA, I have concluded that disclosure of this classified certification, including the basis for the certification as to particular provider-defendants, would cause exceptional harm to national security for the reasons set forth in that certification and must therefore be reviewed *in camera*, *ex parte* by the Court. See 50 U.S.C. § 1885a(c)(1). See 50 U.S.C. § 1885a(c)(1).

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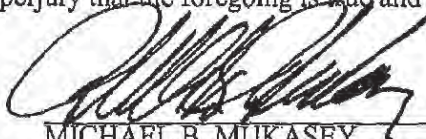
~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~ [REDACTED]

~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

I declare under penalty of perjury that the foregoing is true and correct.

DATE:

9/19/08



MICHAEL B. MUKASEY
Attorney General of the United States

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~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~ [REDACTED]