

1 CINDY A. COHN (SBN 145997)  
cindy@eff.org  
2 KURT OPSAHL (SBN 191303)  
kurt@eff.org  
3 MATTHEW ZIMMERMAN (SBN 212423)  
mattz@eff.org  
4 JENNIFER LYNCH (SBN 240701)  
jlynch@eff.org  
5 NATHAN D. CARDOZO (SBN 259097)  
nate@eff.org  
6 ELECTRONIC FRONTIER FOUNDATION  
7 454 Shotwell Street  
8 San Francisco, CA 94110  
Telephone: (415) 436-9333  
9 Facsimile: (415) 436-9993

UNDERSEAL

ORIGINAL  
FILED  
APR 23 2013  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

10 Attorneys for Petitioner

11  
12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA

WHA

14  
15 CV 13 80 089 MISC  
Case No.

16 )  
17 )  
18 IN RE MATTER OF NATIONAL SECURITY )  
19 LETTERS )

) DECLARATION OF [REDACTED]  
) [REDACTED] IN SUPPORT OF  
) PETITION TO SET ASIDE NATIONAL  
) SECURITY LETTERS AND  
) NONDISCLOSURE REQUIREMENTS  
) IMPOSED IN CONNECTION  
) THEREWITH  
)  
) FILED UNDER SEAL  
)  
)  
)  
)

1 CINDY A. COHN (SBN 145997)  
cindy@eff.org  
2 KURT OPSAHL (SBN 191303)  
kurt@eff.org  
3 MATTHEW ZIMMERMAN (SBN 212423)  
mattz@eff.org  
4 JENNIFER LYNCH (SBN 240701)  
jlynch@eff.org  
5 NATHAN D. CARDOZO (SBN 259097)  
nate@eff.org  
6 ELECTRONIC FRONTIER FOUNDATION  
7 454 Shotwell Street  
8 San Francisco, CA 94110  
Telephone: (415) 436-9333  
9 Facsimile: (415) 436-9993

10 Attorneys for Petitioner  
11

12 **UNITED STATES DISTRICT COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**  
14

15 ) Case No. \_\_\_\_\_  
16 )  
17 ) **DECLARATION OF** [REDACTED]  
18 ) **IN SUPPORT OF**  
19 ) **PETITION TO SET ASIDE NATIONAL**  
20 ) **SECURITY LETTERS AND**  
21 ) **NONDISCLOSURE REQUIREMENTS**  
22 ) **IMPOSED IN CONNECTION**  
23 ) **THEREWITH**  
24 )  
25 ) FILED UNDER SEAL  
26 )  
27 )  
28 )

IN RE MATTER OF NATIONAL SECURITY )  
LETTERS )

---

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**DECLARATION OF** [REDACTED]

I, [REDACTED] declare as follows:

1. I am the President and CEO of [REDACTED]

[REDACTED] If called upon as a witness, I could and would testify competently to the matters stated herein of my own personal knowledge.

2. I submit this declaration in support of [REDACTED] Petition to Set Aside National Security Letter And Nondisclosure Requirement Imposed In Connection Therewith.

3. I have been employed at [REDACTED] since 1991.

4. [REDACTED] is [REDACTED] company that provides long distance and mobile phone services to its customers.

5. [REDACTED]

[REDACTED]

6. [REDACTED]

[REDACTED]

7. [REDACTED]

[REDACTED]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

8. As a result of

[REDACTED]

[REDACTED]

[REDACTED]

9. A significant portion of

[REDACTED]

and engages in

[REDACTED]

10. [REDACTED] has an interest in protecting the communications privacy of its customers.

11. [REDACTED] in addition to those

[REDACTED]

[REDACTED]

12. [REDACTED] believes that it should ensure that any request for information about its customers fully meets both statutory and constitutional standards.

13. On [REDACTED] 2011, [REDACTED] received an NSL that became the subject of litigation ([REDACTED] 2011 NSL”). The [REDACTED] 2011 NSL sought information about a [REDACTED] customer and prohibited [REDACTED] from publicly disclosing any information about the NSL, even the fact of its receipt. Attached as Exhibit A is a true and correct copy of the [REDACTED] 2011 NSL.

14. On May 2, 2011, pursuant to 18 U.S.C. § 3511, [REDACTED] filed a petition in the District Court for the Northern District of California, Case No. 11-2173, to set aside the [REDACTED] 2011 NSL and the accompanying gag, arguing that both violated the First Amendment (“2173 Petition”). Attached as Exhibit B is a true and correct copy of the 2173 Petition.

15. In response to [REDACTED] 2173 Petition, on June 2, 2011, notwithstanding the provisions of 18 U.S.C. § 3511 that explicitly permitted [REDACTED] to file its petition, the government filed a separate civil complaint against [REDACTED] in the District Court for the Northern District of California, Case No. 11-2667, alleging that [REDACTED] had “fail[ed] to comply with a lawfully issued National Security Letter” and that that failure “violates federal law” (“2667 Complaint”). In its complaint, the government also argued that “Defendant’s failure to comply with a lawfully issued National Security Letter interferes with the United States’ vindication of its sovereign interests in

1 law enforcement, counterintelligence, and protecting national security.” Attached as Exhibit C is a  
2 true and correct copy of the 2667 Complaint.

3 16. The 2667 lawsuit was stayed pending the district court’s ruling on the 2173 Petition  
4 and the motion to compel filed by the government in that action.

5 17. On March 14, 2013, the district court found that the underlying NSL statute was  
6 unconstitutional and granted [redacted] 2173 Petition, set aside the [redacted] 2011 NSL, and enjoined  
7 the government “from issuing NSLs under § 2709 or from enforcing the nondisclosure provision in  
8 this or any other case.” That order was stayed pending appeal or for 90 days if no appeal was filed.  
9 The district court’s ruling can be found at 2013 WL 1095417.

10 18. [redacted] on [redacted] 2013, [redacted] received two additional  
11 NSLs addressed to [redacted]  
12 [redacted] ([redacted] 2013 NSLs”). The NSLs sought information about a [redacted]  
13 [redacted] and prohibited [redacted] from publicly disclosing any information about the NSLs, even  
14 the fact of their receipt. The NSLs both contained the identifier [redacted] Attached hereto  
15 as Exhibit D are true and correct copies of the [redacted] 2013 NSLs.

16 19. Though the [redacted] 2013 NSLs were addressed to [redacted]  
17 [redacted] is the entity filing this petition and responding to  
18 the [redacted] 2013 NSLs.

19 20. The [redacted] 2013 NSLs prohibit [redacted] from disclosing information about the  
20 NSLs (or this petition to set them aside) to [redacted] affected customer, to most of [redacted]  
21 employees and staff, to the press, to members of the public, and to members of Congress. They  
22 likewise prohibit [redacted]

23 [redacted]  
24 [redacted]  
25 [redacted]  
26 [redacted]  
27 [redacted]  
28 [redacted]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 12 day of April, 2013, at San Francisco, California.



Exhibit A

Exhibit A



U.S. Department of Justice

Federal Bureau of Investigation

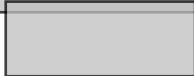
In reply, Please refer to



2013



Dear



Under the authority of Executive Order 12333, dated July 30, 2008, and pursuant to Title 18 United States Code (U.S.C.), § 2709 (§ 201 of the Electronic Communications Privacy Act of 1986) (as amended), you are hereby directed to provide to the Federal Bureau of Investigation (FBI) the name, address, length of service and local and long distance toll billing records associated with the following:



Please see the attachment following this letter for the types of information that you might consider to be a toll billing record. We are not directing that you should provide, and you should not provide, information pursuant to this letter that would disclose the content of any wire communication. Title 18 United States Code § 2510(8) defines content as "any information concerning the substance, purport, or meaning of" a communication.

If the period noted above is from "inception," that term is intended to apply to the current account holder only. If the period noted above is to the "present," that term is intended to direct production of information to the date of the processing of this letter. Information that is responsive to this request may include information that falls



[REDACTED]

within the "billing cycle" that you use, e.g., if the request is for January 1 through July 1, but you maintain account information based on a billing cycle that runs from the 15th of the month, then you may provide information beyond the dates requested (January 1 through July 1) so long as the information provided falls within your billing cycle, i.e., you may provide information from December 15 through July 15. Accordingly, producing information outside the requested date range that is within your billing cycle is not an overproduction.

In accordance with Title 18 U.S.C., § 2709(b), I certify that the information sought is relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities, and that such an investigation of a United States person is not conducted solely on the basis of activities protected by the First Amendment to the Constitution of the United States.

In accordance with Title 18 U.S.C. § 2709(c)(1), I certify that a disclosure of the fact that the FBI has sought or obtained access to the information sought by this letter may endanger the national security of the United States; interfere with a criminal, counterterrorism, or counterintelligence investigation; interfere with diplomatic relations; or endanger the life or physical safety of a person. Accordingly, Title 18 U.S.C. § 2709(c)(1) and (2) prohibits you, or any officer, employee, or agent of yours, from disclosing this letter, other than to those to whom disclosure is necessary to comply with the letter or to an attorney to obtain legal advice or legal assistance with respect to this letter.

In accordance with Title 18 U.S.C. § 2709(c)(3), you are directed to notify any persons to whom you have disclosed this letter that they are also subject to the nondisclosure requirement and are therefore also prohibited from disclosing the letter to anyone else.

In accordance with Title 18 U.S.C. § 2709(c)(4), if the FBI asks for the information, you should identify any person to whom such disclosure has been made or to whom such disclosure will be made. In no instance will you be required to identify any attorney to whom disclosure was made or will be made in order to obtain legal advice or legal assistance with respect to this letter.

In accordance with 18 U.S.C. § 3511(a) and (b)(1), you have a right to challenge this letter if compliance would be unreasonable, oppressive, or otherwise unlawful.

You also have the right to challenge the nondisclosure requirement set forth above. If you wish to make a disclosure that is prohibited by the nondisclosure requirement, you must notify the FBI, in writing, of your desire to do so within 10 calendar days of receipt of this letter. That notice must be mailed or faxed to the [REDACTED] Division,

FOR INTERNAL USE ONLY  
[REDACTED]

[redacted]  
attention: [redacted] with a copy to  
FBI HQ, attention: General Counsel (fax number: 202-324-5366) and must  
reference the date of the NSL and the identification number found on  
the upper left corner of the NSL. If you send notice within 10 calendar  
days, the FBI will initiate judicial proceedings in approximately 30 days  
in order to demonstrate to a federal judge the need for nondisclosure  
and to obtain a judicial order requiring continued nondisclosure. The  
nondisclosure requirement will remain in effect unless and until there is  
a final court order holding that disclosure is permitted.

If you do not send notice of your desire to disclose the NSL or  
the fact that you produced records in response to it within 10 calendar  
days of receipt, then the nondisclosure provision will remain in  
effect, subject to your opportunity to make an annual challenge to the  
nondisclosure requirement as provided by subsection 3511(b).

In accordance with Title 18 U.S.C. § 3511(c), an unlawful failure  
to comply with this letter, including any nondisclosure requirement, may  
result in the United States bringing an enforcement action.

You are directed to provide records responsive to this letter  
through a controlled delivery service such as the United States Postal  
Service or Federal Express to the [redacted] Division within 10  
business day(s) of receipt of this letter. If possible, please provide  
records in response to this letter in electronic format. Due to security  
considerations, you should neither send the records through routine  
mail service nor non-secure fax, nor disclose the substance of this  
letter in any telephone conversation. In responding to this request in  
order to facilitate processing of the information, please reference the  
[redacted]

Any questions you have regarding this letter should be directed to  
[redacted]

Your cooperation in this matter is greatly appreciated.

Sincerely, [redacted]

[redacted]  
Special Agent in Charge  
[redacted]

FOR INTERNAL USE ONLY  
[redacted]




ATTACHMENT

In preparing your response to this National Security Letter, you should determine whether your company maintains the following types of information which may be considered by you to be toll billing records in accordance with Title 18 United States Code, § 2709:



We are not directing that you should provide, and you should not provide, information pursuant to this letter that would disclose the content of any wire communication meaning "any information concerning the substance, purport, or meaning of a communication" as defined in Title 18 United States Code § 2510(8). If the records provided are particularly large we request that you provide this information in electronic format, preferably on a CD-ROM.

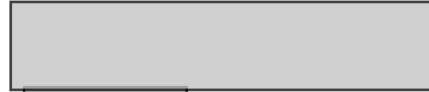
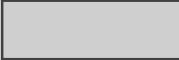
FOR INTERNAL USE ONLY  




U.S. Department of Justice

Federal Bureau of Investigation

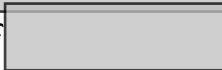
In reply, Please refer to



2013



Dear



Under the authority of Executive Order 12333, dated July 30, 2008, and pursuant to Title 18 United States Code (U.S.C.), § 2709 (§ 201 of the Electronic Communications Privacy Act of 1986) (as amended), you are hereby directed to provide to the Federal Bureau of Investigation (FBI) the name, address, length of service and local and long distance toll billing records associated with the following:



Please see the attachment following this letter for the types of information that you might consider to be a toll billing record. We are not directing that you should provide, and you should not provide, information pursuant to this letter that would disclose the content of any wire communication. Title 18 United States Code § 2510(8) defines content as "any information concerning the substance, purport, or meaning of" a communication.

If the period noted above is from "inception," that term is intended to apply to the current account holder only. If the period noted above is to the "present," that term is intended to direct production of information to the date of the processing of this letter. Information that is responsive to this request may include information that falls within the "billing cycle" that you use, e.g., if the request is for January 1 through July 1, but you maintain account information based on a



billing cycle that runs from the 15th of the month, then you may provide information beyond the dates requested (January 1 through July 1) so long as the information provided falls within your billing cycle, i.e., you may provide information from December 15 through July 15. Accordingly, producing information outside the requested date range that is within your billing cycle is not an overproduction.

In accordance with Title 18 U.S.C., § 2709(b), I certify that the information sought is relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities, and that such an investigation of a United States person is not conducted solely on the basis of activities protected by the First Amendment to the Constitution of the United States.

In accordance with Title 18 U.S.C. § 2709(c)(1), I certify that a disclosure of the fact that the FBI has sought or obtained access to the information sought by this letter may endanger the national security of the United States; interfere with a criminal, counterterrorism, or counterintelligence investigation; interfere with diplomatic relations; or endanger the life or physical safety of a person. Accordingly, Title 18 U.S.C. § 2709(c)(1) and (2) prohibits you, or any officer, employee, or agent of yours, from disclosing this letter, other than to those to whom disclosure is necessary to comply with the letter or to an attorney to obtain legal advice or legal assistance with respect to this letter.

In accordance with Title 18 U.S.C. § 2709(c)(3), you are directed to notify any persons to whom you have disclosed this letter that they are also subject to the nondisclosure requirement and are therefore also prohibited from disclosing the letter to anyone else.

In accordance with Title 18 U.S.C. § 2709(c)(4), if the FBI asks for the information, you should identify any person to whom such disclosure has been made or to whom such disclosure will be made. In no instance will you be required to identify any attorney to whom disclosure was made or will be made in order to obtain legal advice or legal assistance with respect to this letter.

In accordance with 18 U.S.C. § 3511(a) and (b)(1), you have a right to challenge this letter if compliance would be unreasonable, oppressive, or otherwise unlawful.

You also have the right to challenge the nondisclosure requirement set forth above. If you wish to make a disclosure that is prohibited by the nondisclosure requirement, you must notify the FBI, in writing, of your desire to do so within 10 calendar days of receipt of this letter. That notice must be mailed or faxed to the [redacted] Division, attention: [redacted] with a copy to FBI HQ, attention: General Counsel (fax number: 202-324-5366) and must

FOR INTERNAL USE ONLY  
[redacted]

[REDACTED]

reference the date of the NSL and the identification number found on the upper left corner of the NSL. If you send notice within 10 calendar days, the FBI will initiate judicial proceedings in approximately 30 days in order to demonstrate to a federal judge the need for nondisclosure and to obtain a judicial order requiring continued nondisclosure. The nondisclosure requirement will remain in effect unless and until there is a final court order holding that disclosure is permitted.

If you do not send notice of your desire to disclose the NSL or the fact that you produced records in response to it within 10 calendar days of receipt, then the nondisclosure provision will remain in effect, subject to your opportunity to make an annual challenge to the nondisclosure requirement as provided by subsection 3511(b).

In accordance with Title 18 U.S.C. § 3511(c), an unlawful failure to comply with this letter, including any nondisclosure requirement, may result in the United States bringing an enforcement action.

You are directed to provide records responsive to this letter through a controlled delivery service such as the United States Postal Service or Federal Express to the [REDACTED] Division within 10 business day(s) of receipt of this letter. If possible, please provide records in response to this letter in electronic format. Due to security considerations, you should neither send the records through routine mail service nor non-secure fax, nor disclose the substance of this letter in any telephone conversation. In responding to this request in order to facilitate processing of the information, please reference the [REDACTED]

Any questions you have regarding this letter should be directed to [REDACTED]

Your cooperation in this matter is greatly appreciated.

Sincerely, [REDACTED]

[REDACTED]  
Special Agent in Charge  
[REDACTED]

FOR INTERNAL USE ONLY  
[REDACTED]



ATTACHMENT

In preparing your response to this National Security Letter, you should determine whether your company maintains the following types of information which may be considered by you to be toll billing records in accordance with Title 18 United States Code, § 2709:



We are not directing that you should provide, and you should not provide, information pursuant to this letter that would disclose the content of any wire communication meaning "any information concerning the substance, purport, or meaning of a communication" as defined in Title 18 United States Code § 2510(8). If the records provided are particularly large we request that you provide this information in electronic format, preferably on a CD-ROM.

FOR INTERNAL USE ONLY  
