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## Ruppersberger proposes replacing NSA bulk data collection with phone company alerts

By Ellen Nakashima

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The ranking Democratic member of the House Intelligence Committee is proposing an end to bulk collection of citizens' phone data by the National Security Agency, to be replaced by a system that includes daily continuous alerting by the phone companies of numbers suspected of terrorist activity.

The concept, which Rep. C.A. Dutch Ruppersberger (D-Md.) said he is still refining, would require court review of numbers that the phone companies are asked to search against. But it would not call for a requirement that companies hold data longer than they do now.

"We need to end the bulk collection by NSA, but also preserve the important capability that the NSA needs to keep our country safe," said Ruppersberger, whose district includes the NSA's Fort Meade headquarters.

President Obama in January [called for an end to the NSA's gathering](#) of Americans' phone records, a program that has generated much controversy since it was revealed last June through a document leaked to the press by former NSA contractor Edward Snowden. But Obama did not specify what should replace it. Instead, he gave the attorney general and director of national intelligence until March 28 to develop options.

The program, in existence since shortly after the Sept. 11, 2001 terrorist attacks, collects data on phone calls, such as numbers dialed, but not content.

Ruppersberger said he hopes his concept can form the basis for a compromise that Congress, the administration and privacy advocates can accept. He said he has consulted the White House, the NSA and other agencies. And he said he has been in "serious" negotiations with his colleague, Rep. Mike Rogers (R-Mich.), the Intelligence Committee chairman. His goal is to craft bipartisan legislation soon, he said.

He said the court review would be a key element, in an effort to "safeguard American civil liberties." However, the standard proposed would be looser than what some other lawmakers have proposed, which is that numbers searched must be "relevant . . . to an authorized investigation" and "pertain to an agent of a foreign power."

His concept would adopt the “reasonable articulable suspicion” standard used today by the NSA before searching numbers. In January, Obama ordered that a surveillance court approve all numbers the NSA searches as meeting that standard.

Last month, [The Washington Post reported that the NSA was considering](#) an option of having the phone companies search daily against a watchlist of suspect numbers. That is in line with his concept, Ruppertsberger said. Details would have to be worked out, but, he said, the idea would be to send suspect numbers, which a court has deemed to meet the standard, to all phone companies. They would search daily against this list and send back to the NSA any numbers that hit up against the list.

“If you have a terrorist who’s active, you want to have a continuous listing” of numbers, Ruppertsberger said.

Or the NSA could send individual numbers to the phone companies, which would run them against their databases to see if any phone calls popped up, he said. In either case, court review would be required.

Key to his proposal is the absence of a data retention mandate, he said. It is unnecessary, he said, and he opposes it. The phone companies have also expressed strong opposition to such a mandate, and generally lawmakers consider it a non-starter.

In any case, Ruppertsberger said, “if you look at the majority of cases” in which the phone metadata has proven of some use, “most of those occurred within 18 months” of the data being collected.

Ruppertsberger is planning to make a formal announcement Thursday. He is the first of the four congressional intelligence committee leaders to come out in opposition to bulk collection. Sens. Dianne Feinstein (D-Calif.) and Saxby Chambliss (R-Ga.), the chairman and vice chairman of the Senate Intelligence Committee, have sponsored legislation to retain NSA’s ability to collect the data.

Some analysts say that what Ruppertsberger appears to be proposing looks very similar to existing authority under the “pen register” provision of the Foreign Intelligence Surveillance Act. That provision enables the government to order a phone company to send back in real-time “dialing” information, such as phone numbers, if the government can show the information sought would be “relevant to an ongoing investigation to protect against international terrorism” or espionage.

Ironically, that pen register provision was used by a judge of the Foreign Intelligence Surveillance Court in 2004 to authorize bulk collection of Internet metadata. That program, the government says, was discontinued in 2011.

“So the natural way to solve this problem is not by creating a new authority, but by taking the existing authority designed for exactly this purpose, and narrowing it so it can’t be again used for bulk collection,” said Julian Sanchez, a fellow at the CATO Institute and surveillance expert.

Ruppersberger's proposal is "definitely a step in the right direction," said Alex Abdo, a staff attorney with the American Civil Liberties Union, which has brought a legal challenge to the NSA program's constitutionality. But, he said, there are other issues, such as the scale of information returned with a request on what is "a very low standard." It is not known how many numbers are returned on a search of a single suspected terrorist number.

Then-NSA Deputy Director John C. Inglis [told National Public Radio](#) in January that in 2012, agency analysts "looked at" a total of 6,000 phone numbers.