

AMENDMENT TO RULES COMMITTEE PRINT 115-

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OFFERED BY MR. YODER OF KANSAS

At the end of title X, add the following new section:

1 **SEC. 10__ . PRIVACY PROTECTIONS FOR ELECTRONIC**
2 **COMMUNICATIONS INFORMATION THAT IS**
3 **STORED BY THIRD-PARTY SERVICE PRO-**
4 **VIDERS .**

5 (a) VOLUNTARY DISCLOSURE CORRECTIONS.—

6 (1) IN GENERAL.—Section 2702 of title 18,
7 United States Code, is amended—

8 (A) in subsection (a)—

9 (i) in paragraph (1)—

10 (I) by striking “divulge” and in-
11 serting “disclose”; and

12 (II) by striking “while in elec-
13 tronic storage by that service” and in-
14 serting “that is in electronic storage
15 with or otherwise stored, held, or
16 maintained by that service”;

17 (ii) in paragraph (2)—

18 (I) by striking “to the public”;

1 (II) by striking “divulge” and in-
2 serting “disclose”; and

3 (III) by striking “which is car-
4 ried or maintained on that service”
5 and inserting “that is stored, held, or
6 maintained by that service”; and

7 (iii) in paragraph (3)—

8 (I) by striking “divulge” and in-
9 serting “disclose”; and

10 (II) by striking “a provider of”
11 and inserting “a person or entity pro-
12 viding”;

13 (B) in subsection (b)—

14 (i) in the matter preceding paragraph
15 (1), by inserting “wire or electronic” be-
16 fore “communication”;

17 (ii) by amending paragraph (1) to
18 read as follows:

19 “(1) to an originator, addressee, or intended re-
20 cipient of such communication, to the subscriber or
21 customer on whose behalf the provider stores, holds,
22 or maintains such communication, or to an agent of
23 such addressee, intended recipient, subscriber, or
24 customer;”; and

1 (iii) by amending paragraph (3) to
2 read as follows:

3 “(3) with the lawful consent of the originator,
4 addressee, or intended recipient of such communica-
5 tion, or of the subscriber or customer on whose be-
6 half the provider stores, holds, or maintains such
7 communication;”;

8 (C) in subsection (c) by inserting “wire or
9 electronic” before “communications”;

10 (D) in each of subsections (b) and (c), by
11 striking “divulge” and inserting “disclose”; and

12 (E) in subsection (c), by amending para-
13 graph (2) to read as follows:

14 “(2) with the lawful consent of the subscriber
15 or customer;”.

16 (b) AMENDMENTS TO REQUIRED DISCLOSURE SEC-
17 TION.—Section 2703 of title 18, United States Code, is
18 amended—

19 (1) by striking subsections (a) through (c) and
20 inserting the following:

21 “(a) CONTENTS OF WIRE OR ELECTRONIC COMMU-
22 NICATIONS IN ELECTRONIC STORAGE.—Except as pro-
23 vided in subsections (i) and (j), a governmental entity may
24 require the disclosure by a provider of electronic commu-
25 nication service of the contents of a wire or electronic com-

1 munication that is in electronic storage with or otherwise
2 stored, held, or maintained by that service only if the gov-
3 ernmental entity obtains a warrant issued using the proce-
4 dures described in the Federal Rules of Criminal Proce-
5 dure (or, in the case of a State court, issued using State
6 warrant procedures) that—

7 “(1) is issued by a court of competent jurisdic-
8 tion; and

9 “(2) may indicate the date by which the pro-
10 vider must make the disclosure to the governmental
11 entity.

12 In the absence of a date on the warrant indicating the
13 date by which the provider must make disclosure to the
14 governmental entity, the provider shall promptly respond
15 to the warrant.

16 “(b) CONTENTS OF WIRE OR ELECTRONIC COMMU-
17 NICATIONS IN A REMOTE COMPUTING SERVICE.—

18 “(1) IN GENERAL.—Except as provided in sub-
19 sections (i) and (j), a governmental entity may re-
20 quire the disclosure by a provider of remote com-
21 puting service of the contents of a wire or electronic
22 communication that is stored, held, or maintained by
23 that service only if the governmental entity obtains
24 a warrant issued using the procedures described in
25 the Federal Rules of Criminal Procedure (or, in the

1 case of a State court, issued using State warrant
2 procedures) that—

3 “(A) is issued by a court of competent ju-
4 risdiction; and

5 “(B) may indicate the date by which the
6 provider must make the disclosure to the gov-
7 ernmental entity.

8 In the absence of a date on the warrant indicating
9 the date by which the provider must make disclosure
10 to the governmental entity, the provider shall
11 promptly respond to the warrant.

12 “(2) APPLICABILITY.—Paragraph (1) is appli-
13 cable with respect to any wire or electronic commu-
14 nication that is stored, held, or maintained by the
15 provider—

16 “(A) on behalf of, and received by means
17 of electronic transmission from (or created by
18 means of computer processing of communica-
19 tion received by means of electronic trans-
20 mission from), a subscriber or customer of such
21 remote computing service; and

22 “(B) solely for the purpose of providing
23 storage or computer processing services to such
24 subscriber or customer, if the provider is not
25 authorized to access the contents of any such

1 communications for purposes of providing any
2 services other than storage or computer proc-
3 essing.

4 “(c) RECORDS CONCERNING ELECTRONIC COMMU-
5 NICATION SERVICE OR REMOTE COMPUTING SERVICE.—

6 “(1) IN GENERAL.—Except as provided in sub-
7 sections (i) and (j), a governmental entity may re-
8 quire the disclosure by a provider of electronic com-
9 munication service or remote computing service of a
10 record or other information pertaining to a sub-
11 scriber to or customer of such service (not including
12 the contents of wire or electronic communications),
13 only—

14 “(A) if a governmental entity obtains a
15 warrant issued using the procedures described
16 in the Federal Rules of Criminal Procedure (or,
17 in the case of a State court, issued using State
18 warrant procedures) that—

19 “(i) is issued by a court of competent
20 jurisdiction directing the disclosure; and

21 “(ii) may indicate the date by which
22 the provider must make the disclosure to
23 the governmental entity;

1 “(B) if a governmental entity obtains a
2 court order directing the disclosure under sub-
3 section (d);

4 “(C) with the lawful consent of the sub-
5 scriber or customer; or

6 “(D) as otherwise authorized in paragraph
7 (2).

8 “(2) SUBSCRIBER OR CUSTOMER INFORMA-
9 TION.—A provider of electronic communication serv-
10 ice or remote computing service shall, in response to
11 an administrative subpoena authorized by Federal or
12 State statute, a grand jury, trial, or civil discovery
13 subpoena, or any means available under paragraph
14 (1), disclose to a governmental entity the—

15 “(A) name;

16 “(B) address;

17 “(C) local and long distance telephone con-
18 nection records, or records of session times and
19 durations;

20 “(D) length of service (including start
21 date) and types of service used;

22 “(E) telephone or instrument number or
23 other subscriber or customer number or iden-
24 tity, including any temporarily assigned net-
25 work address; and

1 “(F) means and source of payment for
2 such service (including any credit card or bank
3 account number),
4 of a subscriber or customer of such service.

5 “(3) NOTICE NOT REQUIRED.—A governmental
6 entity that receives records or information under
7 this subsection is not required to provide notice to
8 a subscriber or customer.”;

9 (2) in subsection (d)—

10 (A) by striking “(b) or”;

11 (B) by striking “the contents of a wire or
12 electronic communication, or”;

13 (C) by striking “sought,” and inserting
14 “sought”; and

15 (D) by striking “section” and inserting
16 “subsection”; and

17 (3) by adding at the end the following:

18 “(h) NOTICE.—Except as provided in section 2705,
19 a provider of electronic communication service or remote
20 computing service may notify a subscriber or customer of
21 a receipt of a warrant, court order, subpoena, or request
22 under subsection (a), (b), (c), or (d) of this section.

23 “(i) RULE OF CONSTRUCTION RELATED TO LEGAL
24 PROCESS.—Nothing in this section or in section 2702
25 shall limit the authority of a governmental entity to use

1 an administrative subpoena authorized by Federal or
2 State statute, a grand jury, trial, or civil discovery sub-
3 poena, or a warrant issued using the procedures described
4 in the Federal Rules of Criminal Procedure (or, in the
5 case of a State court, issued using State warrant proce-
6 dures) by a court of competent jurisdiction to—

7 “(1) require an originator, addressee, or in-
8 tended recipient of a wire or electronic communica-
9 tion to disclose a wire or electronic communication
10 (including the contents of that communication) to
11 the governmental entity;

12 “(2) require a person or entity that provides an
13 electronic communication service to the officers, di-
14 rectors, employees, or agents of the person or entity
15 (for the purpose of carrying out their duties) to dis-
16 close a wire or electronic communication (including
17 the contents of that communication) to or from the
18 person or entity itself or to or from an officer, direc-
19 tor, employee, or agent of the entity to a govern-
20 mental entity, if the wire or electronic communica-
21 tion is stored, held, or maintained on an electronic
22 communications system owned, operated, or con-
23 trolled by the person or entity; or

24 “(3) require a person or entity that provides a
25 remote computing service or electronic communica-

1 tion service to disclose a wire or electronic commu-
2 nication (including the contents of that communica-
3 tion) that advertises or promotes a product or serv-
4 ice and that has been made readily accessible to the
5 general public.

6 “(j) RULE OF CONSTRUCTION RELATED TO CON-
7 GRESSIONAL SUBPOENAS.—Nothing in this section or in
8 section 2702 shall limit the power of inquiry vested in the
9 Congress by article I of the Constitution of the United
10 States, including the authority to compel the production
11 of a wire or electronic communication (including the con-
12 tents of a wire or electronic communication) that is stored,
13 held, or maintained by a person or entity that provides
14 remote computing service or electronic communication
15 service.”.

16 (c) DELAYED NOTICE.—Section 2705 of title 18,
17 United States Code, is amended to read as follows:

18 “§ 2705. **Delayed notice**

19 “(a) IN GENERAL.—A governmental entity acting
20 under section 2703 may apply to a court for an order di-
21 recting a provider of electronic communication service or
22 remote computing service to which a warrant, order, sub-
23 poena, or other directive under section 2703 is directed
24 not to notify any other person of the existence of the war-
25 rant, order, subpoena, or other directive.

1 “(b) DETERMINATION.—A court shall grant a re-
2 quest for an order made under subsection (a) for delayed
3 notification of up to 180 days if the court determines that
4 there is reason to believe that notification of the existence
5 of the warrant, order, subpoena, or other directive will
6 likely result in—

7 “(1) endangering the life or physical safety of
8 an individual;

9 “(2) flight from prosecution;

10 “(3) destruction of or tampering with evidence;

11 “(4) intimidation of potential witnesses; or

12 “(5) otherwise seriously jeopardizing an inves-
13 tigation or unduly delaying a trial.

14 “(c) EXTENSION.—Upon request by a governmental
15 entity, a court may grant one or more extensions, for peri-
16 ods of up to 180 days each, of an order granted in accord-
17 ance with subsection (b).”.

18 (d) RULE OF CONSTRUCTION.—Nothing in this sec-
19 tion or an amendment made by this section shall be con-
20 strued to preclude the acquisition by the United States
21 Government of—

22 (1) the contents of a wire or electronic commu-
23 nication pursuant to other lawful authorities, includ-
24 ing the authorities under chapter 119 of title 18
25 (commonly known as the “Wiretap Act”), the For-

1 eign Intelligence Surveillance Act of 1978 (50
2 U.S.C. 1801 et seq.), or any other provision of Fed-
3 eral law not specifically amended by this section; or
4 (2) records or other information relating to a
5 subscriber or customer of any electronic communica-
6 tion service or remote computing service (not includ-
7 ing the content of such communications) pursuant to
8 the Foreign Intelligence Surveillance Act of 1978
9 (50 U.S.C. 1801 et seq.), chapter 119 of title 18
10 (commonly known as the “Wiretap Act”), or any
11 other provision of Federal law not specifically
12 amended by this section.

