OLYMPIC FACT-CHECKING OF THE NSA

One of the disclosures from yesterday's WSJ blockbuster that shocked a lot of people was that the NSA and FBI collected all the email and phone communications from Salt Lake City around the time of the 2002 Olympics.

> For the 2002 Winter Olympics in Salt Lake City, officials say, the Federal Bureau of Investigation and NSA arranged with Qwest Communications International Inc. to use intercept equipment for a period of less than six months around the time of the event. It monitored the content of all email and text communications in the Salt Lake City area.

At first I wasn't all that interested. After all, the relationship was discussed in the 2009 Draft NSA IG Report.

But now I am. (Thanks to David Waldman for convincing me to look back at the IG Report.)

Compare what the WSJ reported with what the IG Report says:

> 2002: In early 2002, NSA SSO personnel met with the Senior Vice President of Government Systems and other employees from COMPANY E. Under the authority of the PSP, NSA asked COMPANY E to provide call detail records (CDR) in support of security for the 2002 Olympics in Salt Lake City. On 11 February 2002, the company's CEO agreed to cooperate with NSA. On 19 February 2002, COMPANY E submitted a written proposal that discussed methods it could use to regularly replicate call record information stored in a COMPANY E facility and potentially forward the same information to NSA. Discussions

> with COMPANY E continued in 2003. However, the COMPANY E General Counsel ultimately decided not to support NSA.

It goes on to say that Michael Hayden sent two letters to Company E, which I have always presumed was Qwest.

There are a number of discrepancies here:

- WSJ says both FBI and NSA were involved; NSA IG (which, of course, was reporting exclusively on NSA's role) described only NSA involvement
- NSA IG said NSA discussed only call records with (presumably) Qwest; WSJ says call and Internet content were also involved
- NSA IG dates discussions to February 11; the Olympics started on February 8 and went through February 24
- NSA IG says discussions continued into 2003, which would be longer than the 6 month period the WSJ discussed

Now, several things may be going on here. It may be that FBI initiated this production, and after it started NSA tried to institutionalize it (effectively using the Olympics as an excuse to get Qwest involved in ongoing production like AT&T and Verizon were). It could be Company E is not Qwest at all (though that would raise questions about why NSA IG ignored Qwest's reported involvement altogether). It may be that NSA IG is incorrect—there are other examples where their details don't make sense, and my

inclination is to suspect they're spinning the Qwest negotiations. It may be that NSA IG is obscuring the start date of this — 6 months prior to the Olympics would be August 2001, before 9/11 purportedly authorized this larger collection (remember: WSJ reported that this production from AT&T started in the 1990s). It may be that WSJ's sources are unclear about how this was done and in what time frame.

And consider that neither of these stories jive with Joseph Nacchio's story. He says he was approached about doing warrantless surveillance on February 27, 2001. That time frame would make utmost sense to plan for the Olympics. But if it were true, it would also make Nacchio's other claims — that the company and then he was prosecuted for not cooperating — more interesting. (Note, too, that the NSA IG Report doesn't acknowledge that Nacchio was replaced as CEO during the period when, it claims, NSA was still discussing cooperation.)

None of it makes sense. But the apparent acknowledgment to WSJ that this did go on — and at a greater level of intrusiveness and earlier than the NSA IG lets on — sure merits new attention on Nacchio's claims the government punished him for not cooperating in February 2001. It also merits new attention to the IG Reports produced in 2009; to what degree is the entire report a whitewash of much earlier, much more problematic domestic surveillance NSA didn't want to disclose (ultimately, because they ordered this report) to Congress?

Update: Here are some posts I did on Nacchio in 2007.

Groundbreaker and the Secret Request

What Nacchio Tells Us about the NSA

The Prosecutors Response to Nacchio

Update on the Government's Response to Nacchio

Did Nacchio Lie, or Just Misunderstand?

Note what I surmised here:

> From reading the filing, I think (though I think others will disagree) that what Nacchio describes as Groundbreaker is at least the physical tap into switches that we know AT&T to have accomplished. That's important, because Nacchio walked out of his meeting on February 27, 2001 willing to do Groundbreaker (at least the hardware side of it), but unwilling to do something else NSA requested at that meeting. Which means the telecom involvement goes beyond simply tapping into the switches, and the switch-related aspect is not the troubling side of it.

At least in current incarnation, the telecoms are asked to do an initial sort of data before they hand it over to the government. Was that it?