

MORE CLARITY AND LACK THEREOF IN THE OBAMA DRAGNET REFORM

A Senior Administration Official has clarified two remaining questions I had about the President's plan to reform the dragnet.

First and very importantly, the conference call left unclear (and most subsequent reporting often didn't directly address) whether Obama's plan would apply just to counterterrorism purposes (as the current phone dragnet does) or more broadly (as the House Intelligence Committee RuppRoge proposal does). But SAO is clear: Obama's plan focuses on specific terrorist groups.

The existing program only allows for queries of numbers associated with specified terrorist groups. Our operational focus is to make sure we preserve that counterterrorism authority in any new legislation. We will continue consulting with Congress on these issues.

This, then, is another way in which the President's plan is significantly better than the RuppRoge plan – that it sets out to only cover CT, whereas RuppRoge sets out to cover foreign intelligence purposes broadly. Though that “consult with Congress” bit seems to allow the possibility that the White House will move towards broader use for the query system.

I also wondered – particularly given Verizon's quick statement arguing it should not have to perform analysis for the government – who would do the data integrity analysis required to narrow the query results to those genuinely in contact with a selector, rather than ordering from the same pizza joint. Here, SAO was less

clear, in part, punting the issue to Congress and “stakeholders” like Verizon.

Under the President’s proposal, the government would seek court orders compelling the companies to provide technical assistance to ensure the information can be queried, to run the queries, and to give the records back to the government in a usable format and on a timely basis. As additional questions arise with respect to the proposal, we look forward to working through them with Congress and relevant stakeholders to craft legislation that embodies the key attributes of this new approach. [my emphasis]

As a reminder, here’s Verizon General Counsel Randal Milch’s full statement:

This week Congressmen Mike Rogers (R-MI) and Dutch Ruppersberger (D-MD) released the “End Bulk Collection Act of 2014”, which would end bulk collection of data related to electronic communications. The White House also announced that it is proposing an approach to end bulk collection. We applaud these proposals to end Section 215 bulk collection, but feel that it is critical to get the details of this important effort right. So at this early point in the process, we propose this basic principle that should guide the effort: the reformed collection process should not require companies to store data for longer than, or in formats that differ from, what they already do for business purposes. If Verizon receives a valid request for business records, we will respond in a timely way, but companies should not be required to create, analyze or retain records for reasons other than business purposes. [my emphasis]

Verizon – probably the most important provider for this to work (because AT&T already gives the government what it wants and because it's got the most upside growth) – doesn't want to be forced to change the format in which they keep their data, and it doesn't want to do analysis. But this response seems to say it wants to receive sound query results from Verizon, which would require that analysis first.

RuppRoge, as you'll recall, offers NSA assistance (presumably including Booz NSA contractors working onsite at Verizon) to providers to do this work. As written, the White House proposal does not.

While this is an obscure issue (I may be the only one writing on it!), it has a direct impact on how many completely Americans get sucked into the NSA and subjected to the full range of its analytical tools. And it seems to be a key point of disagreement between the White House and perhaps the most important telecom provider.