THE "OTHER AUTHORITY" FOOTNOTE

For a variety of reasons, I want to track backward what appears to happen to a footnote in the phone dragnet that currently addresses dragnet records from other authorities, as it appears here in the July 18, 2013 Primary Order.

> The Court understands that NSA receives certain call detail records pursuant to other authority, in addition to call records produced in response to this Court's Orders. NSA shall store, handle, and disseminate call detail records produced in response to this Court's Orders pursuant to this Order [3 lines redacted].

The footnote is currently the second footnote off of paragraph 3(c)(iii) about the timeline on RAS authorizations. The footnote was entirely redacted, but still 7 lines, in BR 13-80. It appears to be longer — perhaps 11 lines — in BR 11-107. It appears the same size, but split from the first of two footnotes, in BR 11-57 and BR 11-07; it appears a line or two longer in BR 10-70. The typeface is different but it appears equivalent in BR 10-49, and BR 10-17.

The footnote in that position — now numbered footnote 7 — appears largely unredacted in BR 10-10. It reads:

> The Court understands that call detail records of foreign-to-foreign communications provided by [redacted] pursuant to this Order will not be used to make chain summary records. Further, such records will be used solely for technical purposes, including use by NSA's data integrity analysts to correctly interpret and extract contact information in [redacted] international records. In the event that an NSA analyst performs an authorized query

> that includes a search of the BR
> metadata, and the results of that query
> include information from [redacted]
> foreign-to-foreign call detail records,
> NSA shall handle and minimize the
> information in those records in
> accordance with the minimization
> procedures in this Order, regardless of
> the authority pursuant to which NSA
> obtained the record. In contrast, if the
> analyst's query does not include a
> search of the BR metadata, and the
> results of that query include
> information from [redacted] foreign-to-
> foreign call detail records, then the
> minimization procedures in this Order
> shall not be applied to the information
> in those records.

Primary Orders BR 09-19 and 09-15 are two of
three the government is withholding from that
year. The footnote is entirely redacted in BR
09-13. BR 09-09 is the third Primary Order
withheld from that year (that is the order that
shuts down one provider's production — presumed
to be Verizon — because of the foreign-to-
foreign inclusion). BR 09-06 doesn't split out
the custodian of the third provider, though
includes foreign-to-foreign language; because
the structure of this Order is different, it is
impossible to tell whether the equivalent
footnote appears. BR 09-01 doesn't even include
the foreign-to-foreign language.

Which is an elaborate way of surmising (though
we can't be sure with the redactions) that the
footnote retains a related function between the
time it maps out what to do with foreign-to-
foreign data and the time it currently appears
to say that BR FISA data must be treated
according to BR FISA rules.

As I laid out here, that appears to stem from an
issue dating to 2009 when Verizon turned over
all its call records, including its foreign-to-
foreign ones, under BR FISA (though the
redactions in the BR 10-10 footnote are shorter

— maybe 4-5 characters, so it's possible this happened with a second provider as well). What appears to have happened is FISC shut down their production for a period, resumed it, then tried to deal with the problem with minimization procedures. Over time, the footnote dealing with that evolved into a more general footnote requiring that BR FISA data be treated with BR FISA rules, no matter what ever else happened. This would mean that if Verizon or another telecom provider made the same mistake, NSA would have access to its foreign data for a shorter period of time and subject to much narrower dissemination rules.

Sometime between 2009 and 2011, NSA started putting XML tags on each new piece of data, so it could track where the data came from, presumably to make this process easier, but also so it could run queries under whatever authority provided it with easier minimization rules. That XML system would permit the NSA to comply with the footnote in BR 10-10 easily, by tracking precisely where the data came from.