FISC QUESTIONS RE: AMENDED 2011 SECTION 702 CERTIFICATIONS
NOV. 7, 2011

1. The government previously indicated to the Court that it lacked the capacity to conduct some of the activities that are now required by the amended NSA minimization procedures. Please confirm that the NSA is fully complying with those procedures.

2. The Court's Memorandum Opinion defined "active user" to be "the individual using the electronic communications account/address/identifier to interact with his/her Internet service provider." See Oct. 3, 2011 Memorandum Opinion at 35 n. 34 (emphasis added). However, the amended minimization procedures state that NSA will identify and segregate through technical means MCTs where "the active user of the transaction (i.e., the electronic communications account/address/identifier used to send or receive the Internet transaction to or from a service provider) is reasonably believed to be located in the United States; or the location of the active user is unknown." See Section 3(b)(5)(a). Please confirm that NSA's "technical means" for identification and segregation will focus on the location of the individual using the account.

3. Section 3(b)(5)(a)(1)(a) prohibits NSA from using a segregated Internet transaction "for foreign intelligence purposes" unless it has been determined that the transaction does not contain any wholly domestic communications. It is the Court's understanding that segregated Internet transactions may be used only for the purpose of determining whether any communication within the transaction is wholly domestic. Is this understanding correct? If not, please fully describe any other uses.

4. What circumstances will trigger review by a specially-trained NSA analyst to determine whether a particular Internet transaction contains a discrete wholly domestic communication? It is the Court's understanding that such review occurs only when a segregated Internet transaction is responsive to a query designed to elicit foreign intelligence information. Is this understanding correct?

5. Please confirm that any transactions reviewed under Section 3(b)(5)(b)(1) will be destroyed if the analyst determines that the transaction contains a wholly domestic communication.

6. Section 3(b)(5)(b)(2)(c) indicates that NSA analysts will document certain determinations "if technically possible or reasonably feasible." Please explain under what circumstances documentation would be considered technically possible but not reasonably feasible.

7. Section 3(c)(2) states, in the context of destruction of raw data: "[t]he internet transactions that may be retained include those that were acquired because of limitations on NSA's ability to filter communications." Please explain the meaning of this statement?

~~8. Please explain whether, and if so under what circumstances, NSA will share unminimized~~ communications acquired through its upstream collection under Section 6(c) (sharing with CIA

and FBI) or under Section 8 of the procedures.

9. Section 3(b)(5)(b)(4) of the amended NSA minimization procedures allows NSA to use metadata extracted from Internet transactions without first determining whether the metadata was extracted from a wholly domestic communication or a non-target communication. Please fully describe what constitutes "metadata" within the meaning of this provision.

10. It is the Court's understanding that metadata extracted in accordance with Section 3(b)(5)(b)(4) may otherwise be retained, used, and disseminated in accordance with the other provisions of the amended NSA minimization procedures. Is this understanding correct?

a. For example, is metadata that has been extracted from Internet transactions pursuant to Section 3(b)(5)(b)(4) subject to the two-year retention limit set forth in Section 3(c) of the amended NSA minimization procedures? If not, how long is such metadata retained? If such metadata (including metadata extracted from discrete, non-target communications) is retained for longer than two years, how is Section 3(b)(5)(b)(4) consistent with the requirements of 50 U.S.C. § 1801(h)(1)?

b. Is metadata consisting of U.S. person information disseminated only if such information constitutes foreign intelligence information or is necessary to understand foreign intelligence information or assess its importance? If not, how is Section 3(b)(5)(b)(4) consistent with the requirements of 50 U.S.C. § 1801(h)(1)-(2)?

11. Under Section 3(b)(5)(b)(4), NSA will not extract or use metadata from segregated Internet transactions. Will this limitation impair NSA's ability to determine when the users of targeted facilities have entered the United States?