

FBI'S PEN REGISTERS WITHOUT ANY CALL RECORDS

There's one more aspect of the transparency procedures in USA F-ReDux I find notable (in addition to the IC's sudden unwillingness to share the scope of Section 702 and the fact that FBI will get all the returns from CDR searches, as opposed to a tiny subset as happens now).

As under the Leahy version of USA Freedom Act, the bill only requires the government to count communications collected pursuant to the Pen Register statute.

(3) the total number of orders issued pursuant to title IV and a good faith estimate of—

(A) the number of targets of such orders; and

(B) the number of unique identifiers used to communicate information collected pursuant to such orders;

Location tracking does not count as a communication (and there may be other loopholes in the new, undefined language). So to the extent they're using PRTTs primarily to conduct location tracking, that won't show up.

Remarkably (and in good news, maybe, but who knows?), the FBI exemption they give to everything interesting only applies to non telephone and email identifiers.

(B) ELECTRONIC MAIL ADDRESS AND TELEPHONE NUMBERS.—Paragraph (3)(B) of subsection (b) shall not apply to orders resulting in the acquisition of information by the Federal Bureau of Investigation that does not include electronic mail addresses or telephone numbers.

(Bob Litt, didn't your Yale professors ever tell you not to use a double negative if you wanted to avoid confusing people?)

Again, perhaps this means the FBI is exclusively using PRTT for location data (but even there, to claim they weren't collecting it, they'd have to claim a device identifier was different than a phone number, which it is, but jeebus are they that cynical?). But we know they've got their PCTDD production, which ought to be based off a traditional pen register which ought to collect emails and telephone numbers.

To be honest, I'm confused. I can't imagine how any of the FBI exemptions do anything but hide some of the most interesting collection, which may be the case if they're only using PRTT for location. But still, it doesn't seem to make sense...

One more point of interest. The bill adds to reporting to the oversight committees a requirement that the government list all of the agencies that have been using PRTT.

(4) each department or agency on behalf of which the Attorney General or a designated attorney for the Government has made an application for an order authorizing or approving the installation and use of a pen register or trap and trace device under this title; and