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UNITED STATES
FOREIGN INTELLIGENCE SURVEILLANCE COURT
WASHINGTON, D.C.

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SUPPLEMENTAL ORDER

(S) On [REDACTED] the Court issued orders authorizing the installation and use of pen register and trap and trace devices as requested by the government in the above-captioned docket. In accordance with the government's Verified Memorandum of Law Regarding the Collection of Post-Cut-Through Digits Through Telephone Pen Register Surveillance Under the Foreign Intelligence Surveillance Act, which it filed with the Court on [REDACTED] hereafter "Memorandum"), the government's application explicitly requested authority to record or decode post-cut-through digits. Application, at 9-10. Also in accordance with the Memorandum, the government undertook not to make any affirmative investigative use, through pen register authorization, of post-cut-through digits that do not constitute call dialing, routing, addressing or signaling information, and added for the first time in an application to this Court: "except in rare cases in order to prevent an immediate danger of death, serious

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physical injury, or harm to the national security.”¹ Id. at 10. The Court’s Order directs the government to notify this Court “of any such affirmative use and explain the reasons therefore.” Order, at 5. The relevant orders and authorities will expire on [redacted] (S)

[redacted] (S)

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The Memorandum indicates that, in some cases, post-cut-through digits, i.e., digits dialed from a targeted telephone number after the initial call set-up is completed or “cut through,” may constitute call content; for example, when a caller connects to a

(S) [redacted] and enters a [redacted] number. Memorandum, at 1-2. (S)

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Under existing telephone pen register orders, some service providers supply the government with all post-cut-through digits. Id., at 4. Collecting this information is necessary to determine the call identifying information, because in many instances, the targeted telephone number places credit card, calling card or collect calls by first dialing a carrier access number, then, after this initial call is connected, dialing the phone number of the destination party. Id., at 5. [redacted]

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[redacted] (S)

[redacted] The current definition of “pen register” authorizes the government to collect dialing, routing, addressing or signaling information, but expressly

¹ The government provided an oral briefing to the Honorable Michael J. Davis (then a Judge of the FISC) regarding the FBI’s procedures for avoiding the collection and investigative use of content in the operation of pen registers and trap and trace devices “several months” prior to submitting its Memorandum. Memorandum, at 12. The subject of this oral briefing was FBI guidance that was issued to all field offices on [redacted] in response to a Memorandum from former Deputy Attorney General, Larry D. Thompson, dated [redacted] outlining the Department of Justice policy on the collection of post-cut-through digits through criminal pen registers. Id. Both of these documents were attached to the government’s Memorandum of [redacted]

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provides "that such information shall not include the contents of any communication...."²

50 U.S.C. §1841(2) (incorporating by reference the definition in 18 U.S.C. §3127(3)).

Accordingly, the government in its Memorandum undertakes to impose the restriction in all applications and proposed orders subsequently filed with this Court that the government will make no affirmative investigative use, through pen register authorization, of post-cut-through digits that do not constitute call dialing, routing, addressing or signaling information, except in a rare case in order to prevent an immediate danger of death, serious physical injury, or harm to the national security.

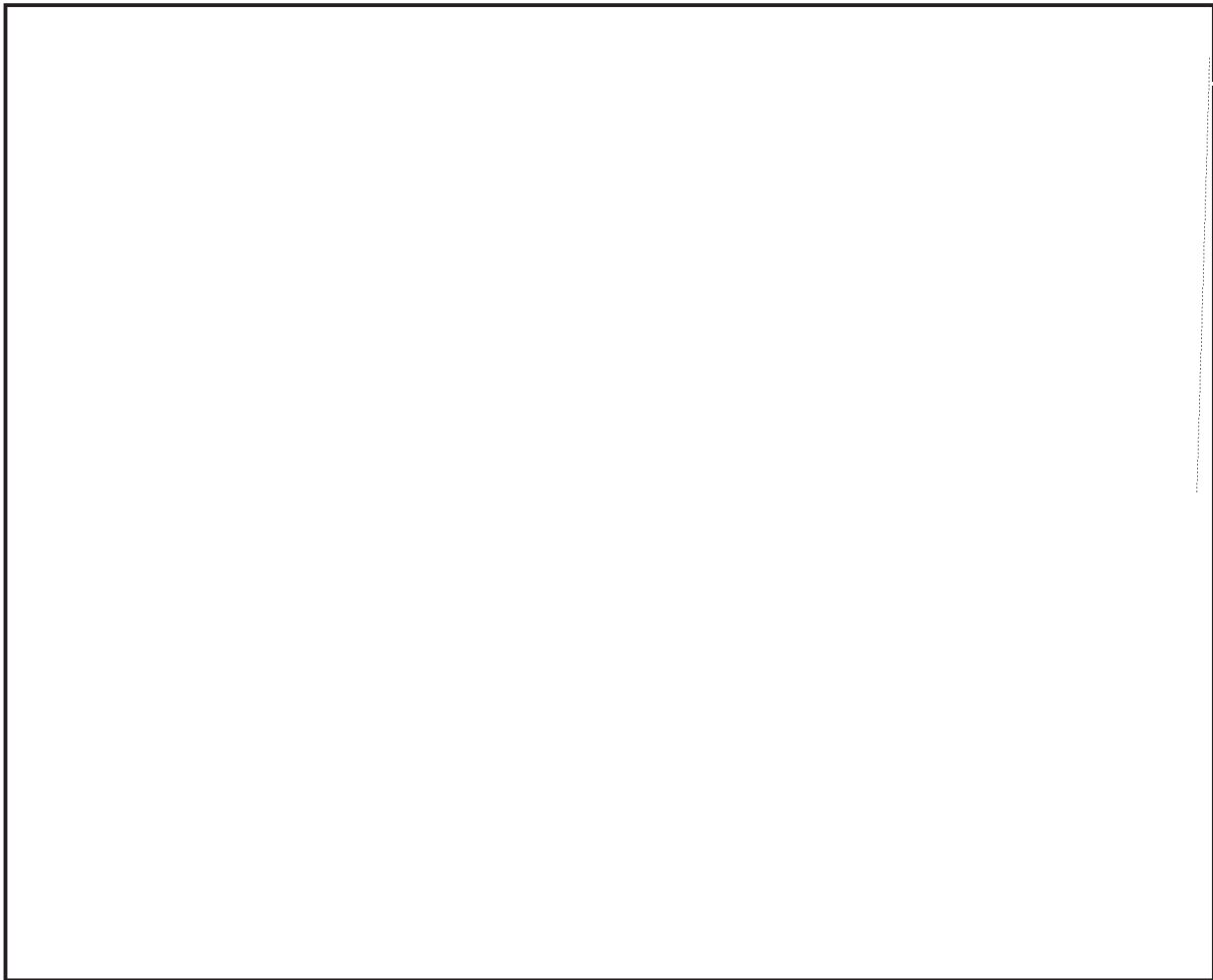
Memorandum, at 12-13.



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(S) [redacted] his Court issued an Order [redacted] directing the government to submit a written brief, no later than [redacted] discussing how, if at all, Magistrate Judge Stephen WM Smith's opinion in *In re Application of the United States for an Order Authorizing (1) Installation and Use of a Pen Register and Trap and Trace Device or Process, (2) Access to Customer Records, and (3) Cell Phone Tracking*, _ F.Supp.2d_, 2006 WL2033877 (S.D. Texas, 2006) affects the government's analysis as set forth in its Memorandum. (S)



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In light of the foregoing, the government is ordered to submit a report, under oath and no later than This report shall include: (S)

- (1) An explanation of how the government is implementing its obligation to make no affirmative investigative use, through pen register authorization, of post-cut-through digits that do not constitute call dialing, routing, addressing or signaling information, except in a rare case in order to prevent an immediate danger of death, serious physical injury, or harm to the national security, addressing in particular:

(a) whether post-cut-through digits obtained via FISA pen register

surveillance are uploaded into [redacted] (S)

(S) [redacted] and

(b) if so, what procedures are in place to ensure that no affirmative investigative use is made of post-cut-through digits that do not constitute call dialing, routing, addressing or signaling information, including whether such procedures mandate that this information be deleted from the relevant system.

(2) An explanation of what procedures are in place to ensure that the Court is notified, as required pursuant to the Court's Order in the above captioned matter, whenever the government decides to make affirmative investigative use of post-cut-through digits that do not constitute call dialing, routing, addressing or signaling information in order to prevent an immediate danger of death, serious physical injury, or harm to the national security.

SO ORDERED, this [redacted] (S)

Colleen Kollar-Kotelly
COLLEEN KOLLAR-KOTELLY
Judge, United States Foreign
Intelligence Surveillance Court

I, Karen E. Sutton, Clerk,
FISC, certify that this document
is a true and correct copy
of the original. *ks*

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