

Spying reforms leaves many dissatisfied

Byron Acohido, USA TODAY 2:44 p.m. EST January 17, 2014

SEATTLE – President Obama this morning left all the major stakeholders tracking the debate over government spying slightly dissatisfied.

In a speech at the justice department in Washington D.C., the President announced new limitations to the government's collection of telephone metadata, and banned U.S. eavesdropping of foreign leaders.

More: Obama attempts to balance privacy and national security.

However, the President acknowledged no wrong-doing by the National Security Agency, nor any changes in personnel.

"People who feel strongly about NSA overreach probably won't be impressed," observes Jeremy Rabkin, international law expert and professor at George Mason University School of Law. "Those who feel that NSA has been grossly negligent in protecting U.S. secrets will be even less reassured."

Obama left unaddressed criticism of the National Security Agency's Internet surveillance programs, including PRISM, XKeyscore and Tempora, exposed by whistleblower Edward Snowden.

Instead, he focused on the statutory authority to collect bulk data from telephone calls, which is set to expire in ten weeks. A majority of House Democrats voted to end this surveillance last August, as did a lot of Republicans.

"I'm doubtful the procedural tweaks and bureaucratic reshuffles announced by Obama today will generate a new consensus in Congress," says Rabkin. "So expect a noisy debate. "

In a nod to privacy advocates, Obama said the NSA will not hold bulk telephone metadata, and said the NSA will need a judicial review before accessing the telephone database. A presidential advisory panel on surveillance policy last month recommended sweeping limits on NSA spying, including a call for control of bulk telephone data placed with a third party. But Obama this morning did not offer a specific proposal for such third party storage.

Michael Sutton, a cybersecurity analyst from Zscaler, noted that few of the recommendations from the presidential advisory panel were adopted.

"And those that were, ended up being watered down," Sutton says. "For example, rather than adding a permanent public advocate to the FISA court, he instead noted that 'significant cases' before the FISA court would also go to an independent panel for review."

That still would appear to leave the door open to "loose restrictions, open to broad interpretation," Sutton says. "Rather than addressing all of the concerns raised by the Presidential Committee, Obama chose to focus on the more controversial components of the program, such as the collection of telephone metadata and spying on foreign leaders."

Greg Nojeim, a program manager at the Center for Democracy & Technology, called the new rules for storage of bulk phone records "merely a shuffling of the chairs, not a real reform."

Says Nojeim: "The only true solution to this issue is restoration of a system of particularized requests, as would be required by the USA Freedom Act."

Julian Sanchez, analyst at The Cato Institute, a Libertarian think tank, noted that if the phone companies are to become the third parties overseeing bulk data they would, "in effect be an arm of government--as a custodian. If records are left with phone carriers, on the other hand, it's important to resist any new legal mandate that would require longer or more extensive retention of private data than ordinary business purposes require. "

Given the complexity of the issues, some observers credit President Obama for doing a commendable job of attempting to delicately balance privacy and national security.

"The public needs to understand that it's a moving target given the rapid pace at which technology is developing," says Stephen Cobb, senior researcher at antivirus vendor ESET. "The President likely failed to satisfy some people on different sides of the debate and that might be an indication he is taking the right steps, walking a fine line between competing ideals and incompatible practical concerns. The bottom line in terms of public concern is that the problem is out in the open and there is a willingness to make changes.