

# MITCH MCCONNELL PREPARES TO REJECT A 6-MONTH WINDOW TO SET UP DRAGNET REPLACEMENT

The surveillance hawks are out feeding the propaganda machine.

First there's Eli Lake claiming that, if Congress were to pass legislation newly immunizing and compensating providers to conduct two-hop spying on Americans, most of whom would be innocent, it would amount to "tak[ing] back some of the extraordinary powers it granted to the executive branch [by...] revok[ing] the NSA's authority to collect telephone records in bulk." The implication is that Congress affirmatively granted the NSA that authority.

Of course, that's not what happened. First, the Bush Administration secretly assumed that authority as it rolled out Stellar Wind, without even fully informing Congress about it or considering the legal implications of collecting Internet metadata via telecom switches. Years later, DOJ found that part of the program unlawful. When DOJ asked the FISA Court to approve that collection – well, in truth, it didn't ask; DOJ told the court it "shall" authorize the collection under the terms of the Pen Register statute – it specifically refused to go to Congress to get it approved. "Government cannot pursue that route because seeking legislation would inevitably compromise the secrecy of the collection program the Government wishes to undertake," the government's application claimed.

It took years after getting a secret court to rubber stamp, twice (in the second instance, without even writing an opinion to explain how the Section 215 statute dictating relevance

might be deemed to mean all) these new dragnet collections before the Executive briefed the full Intelligence Committees, and the Executive didn't share the materials on the program until obligated to do so by the FISA Amendments Act. Though well into 2010, the Executive was withholding documents mandated under FAA for disclosure to the oversight committees. The Executive did provide short, in some ways misleading, summaries to be shared with Congress before they reauthorized the PATRIOT Act. But not only weren't those summaries made easily available to members, in 2011, Mike Rogers didn't pass it on, ensuring that a sufficient number of Congressmen to make the difference in the vote could not be informed. And the briefings held instead were affirmatively misleading.

This is what Eli Lake considers Congress "granting the executive branch authority to collect[] telephone records in bulk," which is where he gets the claim that in shifting the program to providers it would be taking away an authority.

For all its other faults and, at times, outright inaccuracies, Lake accidentally reveals the problem with Mitch McConnell's logic calling for a 2-month reauthorization.

Opponents of the bill raise one technical concern: The legislation gives the NSA 180 days to build a new computer architecture for querying the phone company databases. It's a tricky matter. Phone companies store the records of only their customers, whereas the NSA stored all of these records in one database.

Even Representative Adam Schiff, the ranking Democrat on the House Intelligence Committee and a supporter of the bill to curb bulk collection, acknowledged this could be a problem. Speaking to reporters Tuesday at a breakfast sponsored by the

Christian Science Monitor, Schiff said:  
“I think if we reach an impasse on the authority sunsets, then the NSA will have some responsibility for that breach. I have been urging the NSA for quite some time now to begin the process for developing the process to take data from different providers so they can talk to each other.”

If USA F-ReDux were to pass tomorrow, NSA would have 6 months to set up the replacement (though as Schiff notes, they could have been implementing the new plan for months). But Mitch prefers, instead, a 2-month reauthorization, one-third the amount of time to get this right. Heck, if the program proved unworkable within the first 2 months, Mitch would still have 4 months left to push through legislative changes.

Which means there's really no logical reason for a 2-month extension except parliamentary gamesmanship of the sort that has already put NSA's authorities at risk.

Which is just part of the reason the WSJ's contribution to this inaccurate propaganda fest is so ridiculous. It's chock full of language of urgency.

The Senate is supposed to be the cooling saucer for political passions, but surveillance opponents want it to be a slip 'n slide instead: They want the Senate to accept wholesale revisions to counterterrorism programs with little if any debate before Congress skips town for vacation at the end of the week.

[snip]

The House jammed the Senate last week with a bill

[snip]

a panicky political response to the Edward Snowden-inspired frenzy over

surveillance

[snip]

this untested leap

[snip]

The House bill was dumped as a fait accompli,

[snip]

A rush to the exits

[snip]

Cramming such a major policy into law before a holiday weekend

Except, of course, Mitch Connell has been Majority Leader for almost 5 months, with vast power to set the agenda for the Senate, more than twice as long as he says is needed to have a debate about USA F-ReDux. He has brought 3 bills directly to the floor relating to the phone dragnet – a 5-year straight reauthorization, his 2-month reauthorization, and USA F-ReDux – underscoring that he had the authority to do so during any of the last 130-odd days.

But he chose not to do that. He chose, too, to delay a week after the House passed USA F-ReDux.

So in reality, Mitch has been the one stalling, forcing the Senate into Slip-N-Slide-Jam-Panic-Frenzy-Dump-Rush-Cramming through this legislation. If the WSJ has a problem with that, there's just one person they can blame: the Majority Leader, who is the single most responsible person for it.

There's a lot else in the WSJ propaganda that not only is inaccurate, but makes no sense (Marco Rubio has come out in favor of metadata? Really? That comment has virtually no meaning).

This, though, is the most curious example.

Yet bulk call log searches are an

important analytic tool that aid terror investigations and prevent attacks. The House bill concedes as much, because it purports to preserve this capacity in some form. But rather than let the National Security Agency compile and format metadata, the bill says telecom and tech companies must keep records that the NSA can later request with a court order.

WSJ says “bulk call log searches” are an important too. But in the next sentence it says USA F-ReDux purports to preserve “bulk call log searches.”

While I fault USA F-ReDux for its silence on NSA’s ongoing bulk call log searches collected under EO 12333, USA F-ReDux in fact wrongly purports to end such call log searches and replace it, instead, with non-bulk (in truth, bulky) searches. So no, USA F-ReDux does not concede that the government needs to collect (phone records, at least) in bulk.

This paragraph complains that NSA will no longer be able to format metadata, but incoming format is part of the problem NSA has with the current program; by requiring immunized providers to turn over the data in the format NSA wants, they’ll be able to fix one of the problems they have with the program.

And the WSJ is inconsistent about whether or not providers “must keep records.”

The whole thing, of course, is premised on the claim that bulk searches are an important analytical tool. Call record metadata searches might be – certainly FBI has had success with the metadata they already collect. But the record in fact shows that bulk metadata has *not* been an important analytical tool and in every known case, targeted record collection could have and usually has worked more efficiently.

At some point, it would be nice for beltway horse race reporters to start pointing out how

nonsensical the propaganda supporting extending  
the dragnet is. If this word salad is the best  
the defenders of a so-called necessary  
“intelligence” program can do, it really ought  
to be self-defeating.