

CALEA

looseheadprop has a post at FDL that deserves more attention. Particularly this paragraph:

In 2005, in response to a petition dated March 10, 2004 by the DOJ and FBI, [Ed. note, if you only have time to click on one link—this is it!] the FCC issued a report and Order that said that CALEA applied to facilities-based broadband Internet access providers and providers of interconnected (with the PSTN, Public Switched Telephone Network) Voice-over-Internet-Protocol (VOIP) services. There's a great wiki here. BTW, the hospital room confrontation between Comey and Ashcroft happened on March 10, 2005. [sic, MarkC is right, this should read 2004]

She makes a really interesting catch: DOJ, FBI, (whose heads on that date, were James Comey and Robert Mueller, then in the thick of a squabble with the Administration over "the Program") and DEA asked the FCC to issue a report stating that CALEA applied to things like cable providers, in addition to telecommunications companies. They submitted that request on the very same day as the hospital confrontation—when DOJ was fighting with the Administration over the legality of its illegal wiretap program. The FCC obliged DOJ's request for a ruling the following year, thereby legally expanding the universe of communications providers who could be compelled to let the Feds into their networks. The coincidence of timing suggests that one legal issue that Comey may have believed needed to be fixed was the laws pertaining to cable-based communications systems. Or, it could just be a coincidence of timing.

At this point, I've got more questions than answers about the potential coinkydink. These are:

- If part of the problem with the program was that prior to the FCC ruling, they were illegally requiring the participation of cable companies (companies like Time Warner and Comcast), then why haven't we seen any discussion of the cable companies in any of the reporting on this?
- The DEA participated in the request to the DEA. But we know from Mueller's notes from the time that the DEA wasn't included in any of the high-level meetings on the program. Does this rule against the coincidence being meaningful?
- To what degree do the various FISA amendment bills explicitly or implicitly include cable providers I think it's fairly implicit in the SSCI bill's definition of Electronic Communication Service Provider:

(D) ELECTRONIC COMMUNICATION SERVICE PROVIDER- The term 'electronic communication service provider' means-

(i) a telecommunications carrier, as

that term is defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153);

`(ii) a provider of electronic communications service, as that term is defined in section 2510 of title 18, United States Code;

`(iii) a provider of a remote computing service, as that term is defined in section 2711 of title 18, United States Code;

`(iv) any other communication service provider who has access to wire or electronic communications either as such communications are transmitted or as such communications are stored; or

`(v) an officer, employee, or agent of an entity described in clause (i), (ii), (iii), or (iv). [my emphasis]

But why not say it directly?

Anyway, those are my initial thoughts. And yours?