

# DID THE NSA ASK FOR DATA MINING BEFORE OR AFTER 9/11?

I did my big timeline yesterday to try to pin down how much of what we suspect to be the warrantless wiretap program started in early 2001, rather than post-9/11 as Bush has always claimed. As I pointed out in my timeline, it's clear that Nacchio walked into the February 27 meeting expecting to talk about Groundbreaker. He remained willing to do Groundbreaker. But he was also asked to do something which he was unwilling to do.

My big question is: when did the access to the switches happen, when did the data mining of purportedly international data begin, and when did the data mining of domestic data happen?

Let's start with this comment from William Ockham, who knows a lot more about the telecom side of this than I.

First, I think Nacchio and Qwest objected to at least two different overtures from NSA. In early 2001, I think the NSA asked them to do what AT&T did in San Francisco, set up a tap in to their fiberoptic backbone. In a sense, emptywheel is correct in saying that this activity was part of Groundbreaker. I think it would be more accurate to say that Groundbreaker was a cover for this activity. Qwest would have objected on the grounds that FISA prohibited wire communication interception inside the USA, even if the communication was "foreign to foreign". Qwest was dumped from the Eagle Alliance (Groundbreaker consortium) because it wouldn't play ball.

After 9/11, the NSA came back and asked for "metadata" about their customers and

Qwest refused based on the 1996 Telecommunications Act. This may have been the trigger for Nacchio's prosecution (if one assumes it was a selective prosecution).

Both of these illegal activities were precursors to the so-called TSP. The fiber optic taps provided the means for intercepting communications world-wide and the customer activity data mining was provided the means for identifying the supposedly suspicious needles in the haystack.

Now look at this statement Nacchio's lawyer, Hebert Stern, issued after last year's USA Today story; the statement exactly supports WO's speculation.

In light of pending litigation, I have been reluctant to issue any public statements. However, because of apparent confusion concerning Joe Nacchio and his role in refusing to make private telephone records of Qwest customers available to the NSA immediately following the Patriot Act, and in order to negate misguided attempts to relate Mr. Nacchio's conduct to present litigation, the following are the facts.

**In the Fall of 2001**, at a time when there was no investigation of Qwest or Mr. Nacchio by the Department of Justice or the Securities and Exchange Commission, and while Mr. Nacchio was Chairman and CEO of Qwest and was serving pursuant to the President's appointment as the Chairman of the National Security Telecommunications Advisory Committee, **Qwest was approached to permit the Government access to the private telephone records of Qwest customers.**

Mr. Nacchio made inquiry as to whether a warrant or other legal process had been secured in support of that request. When he learned that no such authority had been granted and that there was a disinclination on the part of the authorities to use any legal process, including the Special Court which had been established to handle such matters, Mr. Nacchio concluded that these requests violated the privacy requirements of the Telecommunications Act.

Accordingly, Mr. Nacchio issued instructions to refuse to comply with these requests. **These requests continued throughout Mr. Nacchio's tenure and until his departure in June of 2002.** [my emphasis]

In other words, the Administration made a request in fall 2001 for "access to the private phone records of Qwest customers." If Stern means "fall" at all literally, then this request came after 9/11—and it could well match the October 2001 time frame described for the start date of the warrantless wiretap program. Stern's reference to the Telecommunications Act makes it clear that this data relates to domestic customers. Now, Stern is responding directly to the USA Today article that exposed the domestic aspect of this program, and which made the following specific comment about Qwest.