

WORKING THREAD: SECTION 215 CHRONOLOGIES

This post consists of two things. First, a comparison of the 2009 notice and the 2011 one on the PATRIOT Act dragnet programs (as well as the one paragraph from the White Paper that largely replicates their compliance language).

Then, it includes the items noted on this Vaughn Index submitted in the ACLU suit for Section 215 information, along with other relevant known dates.

I'm working on some related posts, but needed to post this to refer back to.

Differences between 2009 and 2011 Notices

2011 PDF 3-4: As I noted, the 2011 letter provides proof that this letter was provided to SSCI as well as HPSCI. Thus, it has two sets of 2-page letters, which makes for the difference in length between the two notices.

2009 PDF 3; 2011 PDF 5: The 2009 notice doesn't even reveal which two PATRIOT provisions support the dragnet programs. By contrast, the first two bullet points in the 2011 notice (which are unclassified) name the statutes. This results in slightly different language in the 2nd 2009 bullet and the 3rd 2011 one.

2009 PDF 3; 2011 PDF 5: The 2009 notice appears to describe some of the compliance issues right in the "Key Point" section, in the redacted passage in bullet 5. Thus, where the 2009 notice says "substantial progress has been made in addressing those problems," the 2011 says "the Executive Branch has worked to resolve them."

2011 PDF 5: Note the 2009 notice doesn't have the derivative classification information, which would have prevented Congress from seeing that

this description dates to January 8, 2007.

2009 PDF 4; 2011 PDF 6: In the last bullet, the 2011 bullet mentions the telecom providers in the US. The 2009 redaction is longer than the 2011 one, and would still be longer even if they redacted the “in the United States” language.

2009 PDF 5: The second redaction on the page doesn’t exist in the 2011 notice, where that bullet ends after “Fourth Amendment.”

2009 PDF 5: The third redaction on the page is perhaps 4 lines longer than the 2011 redaction, and would be longer even if the “only a tiny fraction of such records are ever viewed by NSA intelligence analysts” were redacted.

2009 PDF 6: In 2009, the Internet data had to be purged after 4.5 years. In 2011, both programs retained data for 5 years.

2009 PDF 6; 2011 PDF 8: By far the most significant differences between the notices come (not surprisingly) in the Compliance Issues section. The first two sentences are largely similar, though the 2011 one dates the compliance issues to 2009. There is a redacted passage where this language appears in the 2009 one:

The problems generally involved the implementation of highly sophisticated technology in a complex and every-changing communications environment which, in some instances, resulted in the automated tools operating in a manner that was not completely consistent with the specific terms of the Court’s orders.

That said, the redaction in the 2011 notice is almost exactly the same size at this passage, so the language may be exactly or largely the same. This sentence appears in the 2011 notice but not in the 2009 one.

The FISA Court placed several restrictions on aspects of the business

records collection program until the compliance processes were improved to its satisfaction.

The 9-line redaction in the 2011 notice doesn't appear in the 2009 one. Whereas the 2011 starts a new bullet with the sentence beginning, "The incidents, and the Court's responses," the 2009 has that sentence where the redaction appears in the 2011 notice.

Here's the White Paper version of this compliance statement:

Since the telephony metadata collection program under Section 215 was initiated, there have been a number of significant compliance and implementation issues that were discovered as a result of DOJ and ODNI reviews and internal NSA oversight. In accordance with the Court's rules, upon discovery, these violations were reported to the FISC, which ordered appropriate remedial action. The incidents, and the Court's responses, were also reported to the Intelligence and Judiciary Committees in great detail. These problems generally involved human error or highly sophisticated technology issues related to NSA's compliance with particular aspects of the Court's orders. The FISC has on occasion been critical of the Executive Branch's compliance problems as well as the Government's court filings. However, the NSA and DOJ have corrected the problems identified to the Court, and the Court has continued to authorize the program with appropriate remedial measures.

The first sentence is a more generalized introduction to compliance issues (and unlike the two notice letters, is limited to the telephony metadata). Note that it doesn't date all the compliance issues to 2009, which

suggests there have probably been new compliance issues since. It also adds ODNI as one entity that helped discover the problems. The next two sentences are basically the same as appear in the notices. The statement of what the problems were are slightly different, and modified with "generally," which suggests human error and technical issues may not cover everything. The statement about how cranky the court got is totally new; if there have been big issues since 2009, it may suggest the court got crankier this time around.

Now compare this language:

2009:

The court has imposed additional safeguards. In response to compliance problems, the Director of NSA also ordered "end-to-end" reviews of the Section 215 and pen-trap collection programs, and created a new position, the Director of Compliance, to help ensure the integrity of future collection. In early September of 2009, the Director of NSA made a presentation to the FISA Court about the steps taken to address the compliance issues.

2011:

The court has imposed safeguards that, together with greater efforts by the Executive Branch, have resulted in significant and effective changes in the compliance program.

PDF 9 2011: Paragraph 1 adds the word "assess" to the sentence, "NSA needs access to telephony and e-mail transactional information in bulk so that it can quickly identify and assess the network of contacts that a targeted number or address is connected to, whenever there is RAS that the number or address is associated with [redaction]" In addition, the redaction in the sentence may be just slightly longer.

PDF 7 2009; PDF 9 2011: The second paragraph in the 2011 notice address this phrase:

but always based on links to a number or e-mail address which itself is associated with a counterterrorism target.

The 2009 notice treats the “Communications metadata” language as a parenthetical statement; the 2011 starts that sentence with “Again.”

Vaughn Index and Related Dates Timeline

April 28, 2006: Report to Congress regarding implementation of Section 215 authority [released in part]

May 2, 2006: Mueller testimony before SJC

June 2006: Semiannual Report

July 17, 2006: Internal Executive Branch report regarding implementation of Section 215 authority

August 17, 2006: Guidelines for government personnel pertaining to implementation of Section 215 authority

September 5, 2006: Submission to FISC of standard minimization procedures regarding implementation of Section 215 authority

December 2006: Semiannual Report

December 15, 2006: Internal Executive Branch report regarding implementation of Section 215 authority

January 8, 2007: Note to Congressional staffer regarding implementation of Section 215 authority; Guidelines for government personnel pertaining to implementation of Section 215 authority; Training materials for government personnel pertaining to implementation of various acquisition authorities, including Section 215 (5 versions of dramatically

different lengths)

January 25, 2007: Congressional notification regarding implementation of Section 215 authority

March 9, 2007: Internal Executive Branch email message and attached document regarding implementation of Section 215 authority

April 27, 2007: Report to Congress regarding implementation of Section 215 authority

May 2007: Guidelines for government personnel pertaining to Section 215 authority

June 2007: Semiannual report

August 30, 2007: Internal Executive Branch email message about Congressional inquiry for the record regarding implementation of Section 215 authority

November 13, 2007: Production to Congressional Committee of FISC orders, submissions, and supporting materials regarding implementation of Section 215 authority

December 2007: Semiannual report

December 2007: Guidelines for government personnel pertaining to implementation of Section 215 authority

February 25, 2008: Letter from member of Congress to AG Holder [sic] regarding implementation of Section 215

April 2008: Guidelines for government personnel pertaining to implementation of Section 215 authority

June 2008: Semiannual report

April 25, 2008: Order to Yahoo to compel compliance with FAA order

April 30, 2008: REport to Congress regarding implementation of section 215 authority

June 6, 2008: Internal memo addressed to NSD/OI officials including Matthew Olsen in

anticipation of filing to FISC

August 29, 2008: Guidelines for government personnel pertaining to implementation of Section 215 authority; Internal Executive Branch memorandum regarding implementation of Section 215 authority

September 28, 2008 AG Guidelines for Domestic FBI Operations

October 3, 2008: Production to Congressional Committees including FISC submissions and a FISC opinion

December 2008: Semiannual report

December 1, 2008: Production to Congress of FISC opinions and underlying documents on multiple matters, including implementation of Section 215 authority

February 17, 2009: Semiannual report

February 25, 2009: Congressional notification regarding implementation of certain acquisition authorities, including Section 215 authority

March 5, 2009: Submission to Congressional Committees from AAG for Legislative Affairs [cover released]

March 26, 2009: Guidelines for government personnel pertaining to Section 215 authority

March 31, 2009: Dianne Feinstein and Kit Bond request recommendations so they can get started on PATRIOT reauthorization.

April 10, 2009: Congressional notification regarding implementation of Section 215 authority; Guidelines for government personnel pertaining to implementation of Section 215

April 15, 2009: Risen and Lichtblau report new compliance issues with wiretap program

[filed in 2009]: Report to Congress regarding implementation of Section 215 authority [released in part]

May 6, 2009: Response to February 25, 2008

letter to AG on Section 215

May 7, 2009: Congressional notification regarding implementation of Section 215 authority

June 25, 2009: Report regarding implementation of Section 215 authority

June 29, 2009: Congressional notification regarding implementation of certain acquisition authorities, including Section 215 authority

July 2, 2009: Transmittal letter to FISC enclosing copy of report dated June 25, 2009

July 20, 2009: Training materials for government personnel pertaining to implementation of Section 215 authority

September 1, 2009: Briefing materials for FISC

September 3, 2009: Submission to Congressional Committees regarding various matters, including implementation of Section 215 authority. [Cover released]

September 10, 2009: Notification to a Congressional Committee regarding implementation of Section 215 authority

September 14, 2009: DOJ provides recommendations Feinstein and Bond asked for in March; also provides to Pat Leahy (claiming only that SSCI members aware of secret programs)

September 18, 2009: Briefing materials for FISC regarding implementation of Section 215 authority

October 2009: Briefing materials for FISC

October 19, 2009: FBI General Counsel Valerie Caproni briefs Senate Judiciary Committee members in closed session, and SJC and Senate Intelligence Committee staffers on PATRIOT's expiring provisions

October 21, 2009: Statement for the record before a Congressional Committee closed hearing on PATRIOT Reauthorization

November 18, 2009: Briefing materials for government personnel pertaining to implementation of Section 215 authority

December 1, 2009: Semiannual report; December 28 & 29, 2009: Semiannual reports for entire year on physical and electronic FISA

December 17, 2009: Ronald Weich letter to Congress

February 23, 24, 2010: Feinstein and Reyes notify members of Weich letter

[filed in 4/2010]: Report to Congress on implementation of Section 215 authority [released in part]

April 8, 2010: DOJ answers questions for the record posed to Robert Mueller, including on Section 215 authority, posed September

[filed June 2010]: Semiannual report

June 15, 2010: Unnamed FBI briefers brief Senate and House Intelligence staffers on efforts to fix ECPA in closed session; this was pertinent to the Section 215 FOIA because briefers explained why the FBI wasn't using Section 215 rather than ECPA

August 16, 2010: Production to Congress of FISC opinions and underlying documents on multiple matters, including implementation of Section 215 [cover released]

November 2010: Guidelines for government personnel pertaining to implementation of Section 215 authority

December 2010: Semiannual report

December 1, 2010: Memo to Congressional staffer regarding certain acquisition authorities, including Section 215

February 2, 2011: Ronald Weich letter to Congress

February 4, 2011: Production to Congress of FISC opinion and underlying documents, [cover letter

released]

February 8, 2011: Feinstein notifies Congress of Weich letter; Rogers provides no such notice

February 28, 2011: Valerie Caproni and others (including someone from the Director of National Intelligence Office) brief SJC members in closed session (Pat Leahy, Chuck Grassley, John Cornyn, Richard Blumenthal, Sheldon Whitehouse, Dianne Feinstein, Orrin Hatch, and Mike Lee are listed attendees)

March 17, 2011: FBI Executive Assistant Director (now Deputy Director) Sean Joyce, Acting Assistant Attorney General Todd Hinnen, and unnamed others, brief House Intelligence Members on expiring PATRIOT provisions

March 29, 2011: Guidelines for government personnel pertaining to implementation of Section 215 authority

March 30, 2011: Mueller testimony before SJC

[filed in April 2011]: Report to Congress regarding implementation of Section 215 authority [released in part]

May 11, 2011: Training materials for government personnel pertaining to implementation of Section 215 authority (7 different versions of different lengths)

May 13, 2011: FBI Director Robert Mueller and Valerie Caproni brief the House Republican Caucus in closed session

May 26, 2011: Senate approves PATRIOT reauthorization House approves PATRIOT reauthorization

June 2011: Semiannual report

June 2011: Guidelines for government personnel pertaining to implementation of Section 215 authority

September 1, 2011: Congressional notification regarding implementation of Section 215 authority

December 2011: Semiannual report

[filed in April 2012]: Report to Congress on
implementation of Section 215 authority