

COMPENSATING THE DRAGNET

The first and second primary orders approving the phone dragnet, written by Malcolm Howard, included this paragraph.

(2) NSA shall compensate [redacted] for reasonable expenses in providing such tangible things;

The third primary order, written by Frederick Scullin, had no such paragraph.

There's a likely explanation for the disappearance of the paragraph. The Section 215 statute does not provide for compensating providers.

I have no idea whether this means the telecom providers aren't getting compensated (unlikely) or whether they're getting compensated in some other fashion (my bet).

But Congress' failure to include any compensation for responding to a Section 215 order is one more indication that they didn't believe they were signing off on daily production of "substantially all" of providers' metadata.

That raises another question, however. If Congress did not envision paying providers to comply with a Section 215 order, were they paid? If so, with what funds? Who approved such spending?

Update: The Verizon secondary order from April doesn't reflect any compensation.