

THE “CONSULT WITH CONGRESS” STAGE OF USA FREEDUMB

Remember how, in the days after President Obama announced his principles for reforming the dragnet, his Senior Administration Official pretended that any efforts to make the scope of the program worse would come from Congress?

First and very importantly, the conference call left unclear (and most subsequent reporting often didn't directly address) whether Obama's plan would apply just to counterterrorism purposes (as the current phone dragnet does) or more broadly (as the House Intelligence Committee RuppRoge proposal does). But SAO is clear: Obama's plan focuses on specific terrorist groups.

The existing program only allows for queries of numbers associated with specified terrorist groups. Our operational focus is to make sure we preserve that counterterrorism authority in any new legislation. We will continue consulting with Congress on these issues.

This, then, is another way in which the President's plan is significantly better than the RuppRoge plan – that it sets out to only cover CT, whereas RuppRoge sets out to cover foreign intelligence purposes broadly. Though that “consult with Congress” bit seems to allow the possibility that the White House will move towards broader use for the query system.

Well, it looks like the Administration isn't so

passive after all. They're working with House leadership to gut the bill.

TROUBLE FOR USA FREEDOM? – House leadership and Obama administration officials met with committee members Sunday to negotiate changes to key NSA reform legislation, parting late in the evening without reaching a final resolution, said a congressional staffer close to the process. Still, it seems clear that the USA FREEDOM Act, approved by the House Judiciary and Intelligence committees little more than a week ago, will not reach the House floor intact. Some passages have been watered down already, the staffer acknowledged, declining to go into specifics. The bill is set for “possible consideration” this week, according to the schedule circulated by House Majority Leader Eric Cantor’s office.

Word of the talks caused some of the bill’s most ardent privacy and civil liberties backers to cry foul and say they could withdraw support. Areas of concern to watchdogs include possible removal of transparency language allowing companies to tell their customers about the broad numbers of lawful intercept requests they receive; and a debate on whether the search terms used by the NSA to search communications records should be narrowly defined in statute.

“The version we fear could now be negotiated in secret and introduced on the House floor may not move us forward on NSA reform,” said human rights organization Access. “I am gravely disappointed if the House leadership and the administration chose to disrupt the hard-fought compromise that so many of us were pleased to support just two weeks ago,” said Kevin Bankston, policy

director of the New America Foundation's
Open Technology Institute.

And while it's not clear these secret changes would broaden the scope outside of counterterrorism (though I think that's possible already), it does seem clear the Administration is pushing for these changes because the already weak bill is too strong for them.

It's really hard to conclude this bill was ever an attempt to do anything but outsource one aspect of the dragnet to the telecoms, so as to "legally" access geolocation data, and the rest is an attempt to broaden the dragnet.