

THE GOVERNMENT'S TWO FREEBIE PHONE DRAGNET ORDERS

The mood among dragnet reformers has been outright panic about how we need to do something now omigosh we only have 6 weeks.

That's true, to a point.

But as people scream about the urgency of this, they should consider that the government plans to be operating with the old-style dragnet for up to another 6 months.

For what are surely good logistical reasons (the government has to tell the phone companies how they'll have to chain on their smart phone users' data, and Booz will have to set up a giant insecure cloud to conduct the cross-provider chaining), the newfangled chain-on-your-smart-phone dragnet won't start for 6 months after this bill passes.

(a) IN GENERAL.—The amendments made by sections 101 through 103 shall take effect on the date that is 180 days after the date of the enactment of this Act.

(b) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to alter or eliminate the authority of the Government to obtain an order under title V of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 241861 et seq.) as in effect prior to the effective date described in subsection (a) during the period ending on such effective date.

That means the government plans on relying on the old-fashioned suck-it-all-up dragnet for another 6 months.

It also provides a narrow window for the

government to rush through new definitions (for example, of session-identifying information that is not a CDR) that won't be subject to USA F-ReDux's notice requirements.

Hopefully, the FISC would look askance at that ploy. In the last dragnet order, James Boasberg asked most of the right questions about what the government plans to do to convince me he, at least, doesn't intend to be snookered in this lame duck period.

But those running around screaming "PANIC!" should recognize that even under the passage of USA F-ReDux, the dragnet will continue another 6 months.