

MCCONNELL PREPARES TO RETREAT TO SHORT- TERM REAUTHORIZATION

The National Journal yesterday quoted John Cornyn admitting that Republican Senate Leadership may have a short term Section 215 reauthorization in the works.

Senate Majority Leader Mitch McConnell on Tuesday said his chamber would not address government spying reform or highway infrastructure funding despite fast-approaching deadlines for both looming at the end of the month until it cleared the deck on Iran and trade.

But McConnell's top deputy, Majority Whip John Cornyn, said a shorter reauthorization to the Patriot Act authorities could be in the works.

"That's one of the possibilities, because we're going to run into some real time constraints," Cornyn told reporters, when asked specifically about a short extension.

McConnell last month introduced a fast-track bill that would extend until 2020 the three provisions of the Patriot Act due to expire on June 1, including the controversial Section 215, which the National Security Agency uses to justify its bulk collection of U.S. phone records.

It is unclear how long a shorter extension might be, though it would likely be far shorter than the 5 and $\frac{1}{2}$ years so far favored by McConnell. Multiple sources said an extension ranging from 4 to 6 months was one option being considered.

In response to this tacit admission from McConnell that he can't (in actuality, doesn't want to) slam through straight reauthorization, USA F-ReDux boosters are incautiously claiming McConnell is still pushing for straight reauthorization, even while linking to articles stating clearly that's not going to happen.

I take two things away from this. First, while McConnell still is trying to get tactical leverage, especially by pushing through an Iran bill ahead of any Section 215 fix, he has already backed off his claim to be pursuing straight reauthorization. Don't get me wrong, McConnell still is the most powerful player here, so it would be stupid to underestimate what he will do with leverage if his tactics are successful.

But neither should boosters be making what increasingly look like bad faith claims that McConnell really is pursuing straight reauthorization. There are many things the IC gets out of this bill – even aside from things like the 72-hour emergency spying provision and extended material support sentences – that make it a far better outcome for them than straight reauthorization (which is not the same thing as saying that the IC won't do what they can to squeeze more concessions out of boosters). This bill will give the IC phone *and* Internet call metadata, an emergency provision that not only is probably necessary for traditional Section 215 production, but which provides a way to break the law so long as they parallel construct it, and may give them a kind of super hop to benefit from materials that they can't get now. Plus, it will lead to far more liberal sharing of data. These are all improvements over the status quo for the IC, some on functions the IC has been trying to replace since 2009. USA F-ReDux boosters need to understand that to understand the tactics of the other side.

In any case, McConnell apparently now believes his best negotiating position is a short term reauthorization, as happened in 2007 with the

Protect America Act. While I don't think reformers are anywhere near as strongly positioned as we were then (in part because Barack Obama was still pretending to oppose unfettered spying), it is worth remembering that the delay did lead to some concessions.