

ON SAME DAY CABINET DECIDED TO PUNT ON BACK DOORS, TIM COOK SAID NSA WOULD STOP ASKING FOR THEM

The WaPo has an update on the Administration's debate about whether to push for legislation for back doors. It reports that the Obama Administration decided to punt – and not ask for legislation right now while continuing efforts to cajole companies to back door their own products. WaPo even provided the date that decision was made: October 1.

“The administration has decided not to seek a legislative remedy now, but it makes sense to continue the conversations with industry,” FBI Director James Comey said at a Senate hearing Thursday of the Homeland Security and Governmental Affairs Committee.

The decision, which essentially maintains the status quo, underscores the bind the administration is in – between resolving competing pressures to help law enforcement and protecting consumer privacy.

[snip]

The decision was made at a Cabinet meeting Oct. 1.

“As the president has said, the United States will work to ensure that malicious actors can be held to account – without weakening our commitment to strong encryption,” National Security Council spokesman Mark Stroh said. “As part of those efforts, we are actively engaged with private companies to ensure

they understand the public safety and national security risks that result from malicious actors' use of their encrypted products and services."

I'm particularly interested in the date given that's when Tim Cook gave an interview (see NPR's excerpts) where he stated fairly clearly the NSA would not ask for back doors, but FBI might.

Apple CEO Tim Cook said he doesn't think we will hear the U.S. National Security Agency asking for a back door into our iPhones, at least not any more. In an interview on NPR's *All Things Considered* on Thursday, Mr. Cook implied that even the FBI is coming around on the need for end-user encryption.

The intelligence community has asked for a back door. They want access into the communications that are going through Apple's devices. No?

Tim Cook: I don't think you will hear the [National Security Agency] asking for a back door.

Robert Siegel: The FBI?

Tim Cook: There have been different conversations with the FBI, I think, over time. And I've read in the newspapers myself. But my own view is everyone's coming around to some core tenets. And those core tenets are that encryption is a must in today's world. And I think everyone is coming around also to recognizing that any back door means a back door for bad guys as well as good guys. And so a back door is a nonstarter. It means we're all not safe.

When I first read this interview, I was struck by Cook's certainty about the NSA, compared to his uncertainty about FBI. I wondered at the

time whether that certainty meant that the rumored FISC request for a back door was ultimately rejected, which would close off the possibility for NSA for the moment(that would affect FBI, too, but only part of FBI's requests).

Given the coincidence of these two events – Cook's stated certainty and the cabinet decision not to pursue back doors right now – I'm all the more curious.

Has FISC secretly told the government it can't force Apple to back door its products?