

REMEMBER JOSEPH NACCHIO?

Yahoo just announced that it will shortly be releasing the docket from its 2008 effort to challenge a Protect America Act order.

In a report on the release, WaPo notes that the government threatened Yahoo with a \$250,000 day fine for not complying with the Protect America Act order (appreciate the irony of that law's name!).

The U.S. government threatened to fine Yahoo \$250,000 a day in 2008 if it failed to comply with a broad demand to hand over user data that the company believed was unconstitutional, according to court documents unsealed Thursday that illuminate how federal officials forced American tech companies to participate in the NSA's controversial PRISM program.

Umph. That kind of fine would add up quickly.

Which got me thinking about Joseph Nacchio, the Qwest CEO who claims the real source of his insider trading scandal arose from government retaliation when he refused to do something – in January 2001, before NineElevenChangedEverything – that he considered illegal.

According to Nacchio, his troubles can be traced back to a meeting at the NSA's Fort Meade, Md., headquarters on Feb. 27, 2001. The agency asked that Qwest participate in a surveillance program, but Nacchio considered the proposed action to be illegal.

Nacchio was unable to explain the exact nature of the request, which remains classified. However, contrary to news reports, he said discussions with the NSA at the February 2001 meeting didn't

involve turning over telephone records.

"I found that request to be peculiar. I didn't think it was legal. I asked for legal justification. We never got it, and therefore we never did it," said Nacchio, who completed his prison sentence in September. "That was the moment things turned down for me."

The former AT&T (T) executive resigned from his post at Qwest in 2002 after the Securities and Exchange Commission launched an insider-trading investigation. In 2007, he was charged with 42 counts of insider trading.

Nacchio was ultimately convicted on 19 counts for selling stock between April and May 2001, leading to the forfeiture of \$44.6 million and a \$19 million fine. He was sentenced to six years in jail, but his time was reduced to 70 months.

Obviously, the size of Yahoo's fine – for a congressionally authorized, even if unconstitutional program – lends far more credibility to the claim that the government retaliated by setting Nacchio up for an insider trading prosecution. (See also this post which tracks some interesting discrepancies in the stories, which is one of a number of reasons I believe the NSA IG report on the illegal dragnet is itself incorrect.)

It also makes me wonder about two other companies – an Internet company, and what is probably something like Cisco – that refused to cooperate with the illegal dragnet.

There really isn't a lot of rule of law surrounding the government's spying.