


Warrantless Spying Showdown Postponed to Monday -- UPDATED

By Ryan Singel  December 14, 2007 | 2:23:12 PM Categories: [NSA](#)

Senate Majority leader Harry Reid announced Friday that he will start debate Monday on bills that will let the nation's spies use American telecom facilities and services for warrantless wiretapping, choosing to start with the most expansive bill and then letting a second version be considered as an amendment. Congress is moving quickly on the legislation, since the Democrats are seeking to reverse some of the extensive surveillance powers it handed to the Administration this summer in rush legislation known as the Protect America Act.

Action could have started as soon as today, forcing a promised filibuster to happen over the weekend, but today Reid indicated on the Senate floor that he would wait until Monday:



In this instance on the FISA bill the controversial but important FISA bill, there are two committees that have jurisdiction. Intelligence committee and after that it is referred to the judiciary committee. They have both done their work and they have done good work. What some may want to do is take what I thought was the best out of one and the best of the other and bring it to the floor. I cannot do that unless I trample the system. Under regular order, I will bring the intelligence committee bill to the floor and the first operative action after that is the judiciary committee. Senator Leahy is an experienced veteran legislator here longer than I and he knows what it do. The Senate will work its will as to what needs to be done with FISA. I'll guarantee you right now, one thing that's going to occur: not everyone will be happy.

The move comes after weeks of speculation over whether Reid would prefer the Senate Intelligence committee's version - a bill favored by the Administration -- or the Senate Judiciary's version. Senator Christopher Dodd (D-Connecticut has a hold on the Intel bill, since it includes amnesty for telecoms being sued for helping with the government's secret, warrantless wiretapping program, but Reid decided to override that hold. Civil liberties groups prefer the version from the Judiciary Committee, led by Senator Patrick Leahy (D-Vermont), since it requires an investigation into the warrantless spying program, is mum on immunity and more tightly limits warrantless wiretapping inside American soil.

Dodd has also promised to filibuster any bill granting retroactive immunity to telecoms, a move that fellow Senators/Democratic presidential candidates Barack Obama (Illinois) and Hillary Clinton (New York) said they would support.

Opponents of the Intel bill contend that setting that bill as the default and the Judiciary as the substitute makes it nearly impossible to substitute the latter for the former, since it could require up to 60 votes to do so. If Reid had reversed the order, putting the Judiciary bill first, it could have taken 60 votes to include amnesty.

On Wednesday, 14 senators [urged](#) (.pdf) Reid to start with the Senate Judiciary bill, since it was written up in an open, rather than secret, process.

Any bill that is passed by the Senate will have to be reconciled with the House's already passed Restore Act. That bill has no immunity provision and lets the NSA wiretap without warrants inside the United States only so long as they know that their targets are foreigners communicating with other foreigners and don't use any accidentally collected communications from Americans without getting a court order.

Since that provision doesn't provide the NSA with a way to order companies such as Google or AT&T to help, House Republicans argue the bill effectively requires the NSA to get court orders to wiretap anyone when the NSA wants to collect that info from switches and communication companies inside the United States.

UPDATE: Reid's full statement Friday morning:

I will shortly move to proceed to S. 2248, the FISA Improvement Act of 2007. I spoke briefly on this subject earlier, but I want to provide a more complete explanation of the process by which the Senate will consider this important bill. Earlier this year, the Director of National Intelligence came to Congress and alerted us to what he described as a significant gap that had emerged in our nation's foreign intelligence gathering capacity.

Members on both sides of the aisle – and from all sides of this important debate – became convinced that this problem was real, and that we had an obligation to address it. Although we may differ on the solutions required, all Senators – both Democrats and Republicans – want to ensure that intelligence professionals have the tools they need to keep our country as safe as possible. We worked in good faith with the Administration through July and August to provide those tools in a way that protects the privacy and liberties of law-abiding Americans.

Unfortunately, the final bill signed by President Bush fell well short of that goal.

Many other Democrats and I opposed the so-called Protect America Act. That's why we made sure that it had a six-month sunset so that we could come back to do a better job of ensuring judicial and congressional oversight of these sensitive activities. As my colleagues know, the Senate Judiciary and Intelligence Committees share jurisdiction over the Foreign Intelligence Surveillance Act. Both Committees have worked diligently over the past few months, this hard work has resulted in two different versions of legislation to improve FISA – S. 2248 – reported out of the Committees. I consulted extensively with Chairman Rockefeller and Chairman Leahy about the best way for the Senate to consider this subject.

I have determined that in this situation, it would be wrong of me to simply choose one committee's bill over the other. I personally favor many of the additional protections included in the Judiciary Committee bill, and I oppose the concept of retroactive immunity in the Intelligence bill. But I cannot ignore the fact that the Intelligence bill was reported favorably by a vote of 13-2, with most Democrats on the committee supporting that approach. I explored the possibility of putting before the Senate a bill that included elements of both two committee bills. Earlier this week, I used Senate Rule 14 to place two bills on the calendar.

The first – S. 2440 – consists of Titles I and III of the Intelligence bill, but did not include Title II on retroactive immunity. The second bill – S. 2441 – consists of Title I of the Intelligence bill and Titles II and III of the Judiciary bill. But after consulting further with Chairman Rockefeller and Chairman Leahy, a consensus emerged among the three of us that the best way to proceed would be by regular order. Both Chairmen agreed with this approach.

Under regular order, and the rules of the Senate governing sequential referral, I will move to proceed to S. 2248 – the bill reported by each committee. When that motion to proceed is adopted, the work of both committees will be before the Senate. Because of the order in which they considered the bill, the Intelligence Committee version will be the base text, and the Judiciary Committee version will be automatically pending as a substitute amendment.

In the weeks since the two committees acted, Senators Rockefeller and Leahy have been working hard to narrow the difference between their two versions of the bill. The ranking Republicans, Senators Bond and Specter, have been included in many of these conversations. I expect that when we begin debate on the bill, there will be amendments to incorporate many of the Judiciary Committee provisions into the Intelligence Committee text.

In my view, that will make the final product stronger. There is one issue that cannot be resolved through informal negotiation. As some are aware, the Intelligence Committee's bill provides the telephone companies with retroactive immunity from lawsuits filed by their customers for privacy violations. Many members, myself included, believe that such a grant of immunity is unwise. I expect there will be a full debate on this subject next week.

Senators Specter, Feinstein, Whitehouse and others are working to craft a compromise that might give the phone companies some relief – but allow the lawsuits to go forward in a manner that would preserve accountability. In one way or another, we must ensure that President Bush is held accountable for his actions. It is important for the Senate to complete work on this bill next week to allow time for the Senate and House to produce a final bill. Our ultimate goal is a bill that commands broad bipartisan support in the Congress and in the country. The process I just outlined offers us the best opportunity to do so.