

FINAL FISA DEAL: TITLE II IMPROVEMENTS

ELEVATES STANDARD OF REVIEW

- The standard of Court review has been elevated from abuse of discretion to substantial evidence.
- This new standard provides for meaningful review by the District Courts, where the cases are currently pending, of whether companies received written directives from the government requesting post-9/11 assistance.
- The Senate bill contained an abuse of discretion standard – an extremely low, administrative law standard -- which converted the Court into a rubber stamp.

PROVIDES FOR COURT REVIEW OF SUPPLEMENTAL MATERIALS

- Allows District Court to review all of the materials upon which the AG relied in making his statement that the company should be immune.
- This means the Court may examine the Court Order, 2511 certification, written request, or directive.
- The Senate bill only allowed the Court to review the AG's statement that the company should be immune.

ALLOWS PLAINTIFFS TO PARTICIPATE IN THE COURT'S REVIEW

- All parties to litigation, including plaintiffs and defendants, may submit any relevant material to the Court and must be permitted to participate in the briefing or argument of any legal issue before the Court.
- In the Senate bill, plaintiffs were not allowed to see or submit any materials and were not allowed to participate in any Court proceedings.