



U.S. Department of Justice

Executive Office for United States Attorneys  
Freedom of Information/Privacy Act Staff  
600 E Street, N.W., Room 7300  
Washington, D.C. 20530  
202-616-6757 Fax 202-616-6478

Requester: Catherine Crump Request Number: 07-4127

Subject of Request: Mobile Phone Tracking (Item 1-4)/INN

Dear Requester:

SEP 16 2008

Your request for records under the Freedom of Information Act has been processed. This letter constitutes an interim reply from the Executive Office for United States Attorneys, the official record-keeper for all records located in this office and the various United States Attorney's Offices. To provide you the greatest degree of access authorized by the Freedom of Information Act and the Privacy Act, we have considered your request in light of the provisions of both statutes.

Some of the records you seek are located in a Privacy Act system of records that, in accordance with regulations promulgated by the Attorney General, is exempt from the access provisions of the Privacy Act, 28 C.F.R. § 16.81. We have also processed your request under the Freedom of Information Act and are making all records required to be released, or considered appropriate for release as a matter of discretion, available to you. This letter constitutes a partial denial. The enclosed material is responsive to category one of your request.

Enclosed please find:

- 14 page(s) are being released in full (RIF);
- 3 page(s) are being released in part (RIP);
- 26 page(s) are withheld in full (WIF). **The redacted/withheld documents were reviewed to determine if any information could be segregated for release.**

The exemption(s) cited for withholding records or portions of records are marked below. An enclosure to this letter explains the exemptions in more detail.

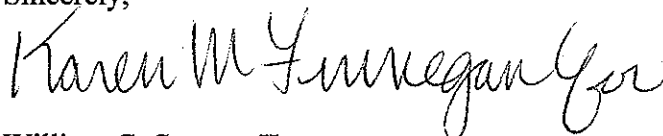
Section 552

Section 552a

- |                                 |  |   |  |
|---------------------------------|--|---|--|
| <input type="checkbox"/> (b)(1) | <input type="checkbox"/> (b)(4)            | <input type="checkbox"/> (b)(7)(B)            | <input checked="" type="checkbox"/> (j)(2) |
| <input type="checkbox"/> (b)(2) | <input checked="" type="checkbox"/> (b)(5) | <input checked="" type="checkbox"/> (b)(7)(C) | <input type="checkbox"/> (k)(2)            |
| <input type="checkbox"/> (b)(3) | <input type="checkbox"/> (b)(6)            | <input type="checkbox"/> (b)(7)(D)            | <input type="checkbox"/> (k)(5)            |
| _____                           | <input type="checkbox"/> (b)(7)(A)         | <input type="checkbox"/> (b)(7)(E)            | <input type="checkbox"/> _____             |
| _____                           |  | <input type="checkbox"/> (b)(7)(F)            |  |

Although I am aware that this request is the subject of ongoing litigation and that appeals are not ordinarily acted on in such situations, I am required by statute and regulation to inform you that if you consider my response to be a denial of your request, you have the right to file an administrative appeal by writing within 60 days from the date of this letter to the **Office of Information and Privacy, United States Department of Justice, 1425 New York Avenue, Suite 11050, Washington, D.C. 20530-0001**. In light of the fact that this is an interim response, I would ask that you wait until the EOUSA has issued its final response in this request before you file an appeal.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen M. Furuegan". The signature is written in a cursive style and is positioned above the typed name.

William G. Stewart II  
Assistant Director

Enclosure(s)

**Requester: Catherine Crump**

**FOIA #: 07-4127**

**Continuation Sheet:**

Please note that your original letter has been split into nineteen separate files ("requests"), for processing purposes, depending on the nature of what you sought. Each file will have a separate Request Number (listed below), for which you will receive a separate response: 07-4120 through 07-4138.

This response is to FOIA No. 07-4127 only and does not include search results associated with the other requests listed above.

## EXPLANATION OF EXEMPTIONS

### FOIA: TITLE 5, UNITED STATES CODE, SECTION 552

- (b)(1) (A) specifically authorized under criteria established by and Executive order to be kept secret in the in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual.
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

### PRIVACY ACT: TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to Executive Order 12356 in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability eligibility, or qualification for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his identity would be held in confidence.

REQUESTER: Catherine Crump

FOIA FILE#: 07-4127

MIXED DOCUMENTS

Pages RIF 5  
Pages RIP 3  
Pages WIF \_\_\_\_\_  
DUP Pages \_\_\_\_\_

**Finnegan, Karen (USAEO)**

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**From:** Bella, Daniel (USAINN)  
**Sent:** Monday, January 22, 2007 11:54 AM  
**To:** Schmid, Donald (USAINN); Hays, Kenneth (USAINN); Capp, David (USAINN)  
**Cc:** VanBokkelen, Joseph (USAINN)  
**Subject:** RE: FBI need for ct order -- kidnapping case

Donald and I discussed language to be used in a subsequent order situation. I sent to Donald some forms we've used addressing the cell site issue.

The human side of this is sobering. On the legal side, these are just the facts that would be a good test of the cell site issue.

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**From:** Schmid, Donald (USAINN)  
**Sent:** Monday, January 22, 2007 9:49 AM  
**To:** Hays, Kenneth (USAINN); Bella, Daniel (USAINN); Capp, David (USAINN)  
**Cc:** VanBokkelen, Joseph (USAINN)  
**Subject:** FBI need for ct order -- kidnapping case

FBI and I assisted over the weekend with an ongoing kidnapping/attempted murder case out of Elkhart county. The facts are below. [

b7C

b7C

b7C

b7C

RIP  
b7C

Donald J. Schmid  
Assistant United States Attorney  
U.S. Attorney's Office  
204 S. Main Street  
South Bend, IN 46601  
(574) 236-8287  
FAX: (574) 236-8155  
[donald.schmid@usdoj.gov](mailto:donald.schmid@usdoj.gov)

**Finnegan, Karen (USAEO)**

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**From:** Bella, Daniel (USAINN)  
**Sent:** Friday, April 20, 2007 4:42 PM  
**To:** Bell, Gary (USAINN)  
**Subject:** Pen register forms w/ p/c for cell site info

Here are the forms. An agent affidavit needs to be attached to the application.



per register order  
with pc for...



per register  
application with ...

RIF



**Finnegan, Karen (USAEO)**

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**From:** Bella, Daniel (USAINN)  
**Sent:** Wednesday, February 07, 2007 6:09 PM  
**To:** Stewart, Randall (USAINN)  
**Subject:** FW: Cell site issue

**Contacts:**

[ b7c ]

Randy,

The issue is that we cannot obtain cell site data with just a pen register and 2703(d) order, like we used to. This has been brewing across the country, and Judge Lee entered an order in our District on the issue. Our work around is to prepare the same documentation, but to add to it an affidavit by an agent that establishes probable cause to get the cell site data. See my e-mail below that I sent to [ b7c ] for more details. Compare the attached go-bys to what you have, and hopefully that will point you in the right direction, to modify or rewrite (or have re-written) what's been given you. You'll need an affidavit from the agent too.

When I get room to breath, I'll post this on the intra-net so all can have access to this.

Please let me know if you need more or have any questions.

-Dan

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**From:** Bella, Daniel (USAINN)  
**Sent:** Tuesday, February 06, 2007 3:06 PM  
**To:** [ b7c ]  
**Subject:** Cell Site Issue

[ b7c ]

Attached are the order from Judge Lee in Ft. Wayne saying that we cannot get cell site information just from a pen register and 2703(d) order (for provider records), and that we make a showing of probable cause.

Also attached are an application and an order where we took our standard pen register application and added language at paragraphs 11 and 12 indicating that we are establishing probable cause. There would be an affidavit attached to the application. I do not have the affidavit that we used in this instance, but the facts are going to be different for every application and the AUSA and agent will need to coordinate on the affidavit. [ b5 - - - - b5 ]

Since you may not use WordPerfect, I've also included pdf files of the application and order.

This has been used by AUSAs David Nozick in Hammond, and by Jesse Barrett and Donald Schmid in South Bend.

I hope this helps.

R1A  
b5  
b7c

-Dan Bella  
Criminal Chief, U.S. Attorney's Office, N.D. Indiana  
Direct: (219) 937-5609



Judge Lee  
order.pdf



pen register  
application with ...



pen register order  
with pc for...



pen register  
application with ...



pen register order  
with pc for...

Tracking:

RIF

**Recipient**  
Stewart, Randall (USAINN)

**Read**  
Read: 2/15/2007 1:52 PM

RIF

**Finnegan, Karen (USAE0)**

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**From:** Bella, Daniel (USAINN)  
**Sent:** Monday, January 22, 2007 11:51 AM  
**To:** Schmid, Donald (USAINN)  
**Subject:** Pen register w/ cell site documents

Donald,

Dave Nozick and I discussed the cell site issue and came up with the attached forms. Please see paragraph 11 of the application, and the second full paragraph on page two of the order. A separate affidavit by the agent was attached to the application. [ b5 ]

FYI, David provided these same forms to Jesse Barrett on or about 10/13/06 for his use in a South Bend investigation.

Good luck.

-Dan



per register order  
with pc for...



per register  
application with ...

Tracking:

RIP  
b5

**Recipient**  
Schmid, Donald (USAINN)

**Read**  
Read: 1/22/2007 12:05 PM

RIF

REQUESTER: Catherine Crump

FOIA FILE#: 07-4127

DOCUMENTS Released in Full "RIF"

9 pages

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION**

IN THE MATTER OF THE )  
APPLICATION OF THE UNITED )  
STATES OF AMERICA FOR AN )  
ORDER: (1) AUTHORIZING THE ) Case No. 1:06-MC-6  
INSTALLATION AND USE OF A )  
PEN REGISTER AND TRAP AND )  
TRACE DEVICE; (2) AUTHORIZING )  
THE RELEASE OF SUBSCRIBER AND )  
OTHER INFORMATION; AND )  
(3) AUTHORIZING THE DISCLOSURE )  
OF LOCATION-BASED SERVICES )

IN THE MATTER OF THE )  
APPLICATION OF THE UNITED )  
STATES OF AMERICA FOR AN ) Case No. 1:06-MC-7  
ORDER: (1) AUTHORIZING THE )  
INSTALLATION AND USE OF A )  
PEN REGISTER AND TRAP AND )  
TRACE DEVICE; (2) AUTHORIZING )  
THE RELEASE OF SUBSCRIBER AND )  
OTHER INFORMATION; AND )  
(3) LOCATION OF CELL SITE )  
ORIGINATION AND/OR TERMINATION )

**AMENDED OPINION AND ORDER**

The Magistrate Judge has denied the Government's applications in the above matters for orders authorizing the installation and use of a pen register and trap and trace device. In both applications, the Government seeks an order, pursuant to 18 U.S.C. §§2703(d), 3123 (a), 3123(b)(2), and 3124(a), requiring cellular telephone companies to disclose to agents of the United States Marshal's Service information regarding the location of particular cellular telephones.<sup>1</sup> After the

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<sup>1</sup>When powered on, a cellular telephone automatically communicates with one or more cellular towers and constantly scans for the cell tower that provides the best reception. As the phone changes location, it automatically switches cell towers. Cellular telephone companies track the identity of the cell towers serving a phone and can provide information as to the general location of a cellular telephone

Magistrate Judge denied the applications, the Government filed a Notice of Appeal to the District Court which is meant to trigger review by a District Judge of the Magistrate Judge's Order ("the Order"), presumably by reference to Fed.R.Crim.P. 59(a) and 28 U.S.C §636(b)(1)(A). Under those provisions, this court may reconsider any nondispositive matter where it is shown that the magistrate judge's order is clearly erroneous or contrary to law.<sup>2</sup> Because the undersigned finds no error in the Magistrate Judge's Opinion and Order denying the Government's applications, the Governments appeal will be DENIED.

As noted above, the Government filed two applications for (1) pen registers and trap and trace devices; (2) the release of subscriber and other information; and (3) the disclosure of location based services. In one application, the Government seeks "the numbers called by and numbers called to the Subject [Cellular] Telephone Numbers as well as the location of the cell phones *while in use...*" (Application for Pen Register, 06-MC-07). The second application requests the "numbers called by and numbers called as well as the locations of the cell phone..." (Application for Pen Register, 06-MC-06). The Magistrate Judge described these two requests by stating that one seeks the "real time" location of the cell phone(s) throughout the duration of the call presumably to "track" the whereabouts of the cellular caller, while the second request seeks "historical" cell site location information. Either way, the Government is requesting an order requiring cellular phone companies to identify the specific cell tower from which a call originates, is maintained, or received for an incoming or outgoing call. And, as is detailed below, this Court agrees with the Magistrate Judge

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based on the location of the cell tower serving the phone. For a more detailed explanation of cell phone technology, see *In re Application for Pen Register and Trap/Trace Device with Cell Site Location Authority*, 396 F.Supp.2d 747, 750 (S.D. Texas 2005).

<sup>2</sup>Even under the more rigorous *de novo* review, the undersigned's conclusion would not change.



that such information is unobtainable absent a warrant.

The Government cites to the Pen Register and Trap and Trace Devices Statute<sup>3</sup> (“Pen Register Statute”), 18 U.S.C. §§3121-27(4), and the Stored Wire and Electronic Communications Act (“SCA”), 18 U.S.C. §2703 as authority for its requests. Pursuant to the Pen Register Statute, the Government may obtain “dialing, routing, addressing, and signaling information utilized in the processing and transmitting of wire and electronic communications.” 18 U.S.C. §3121(c). Courts examining this provision are in agreement that “signaling information” includes cell tower locations which are pertinent to transmission or reception of a cellular telephone call. *In re ...Cell Site Information*, 412 F.Supp.2d 947 (E.D.Wis. 2006) (“Wisconsin Decision”).

To obtain the above information, §3122(a) authorizes an attorney for the United States to apply for an order, “in writing, under oath or equivalent affirmation, to a court of competent jurisdiction.” The application must include the identity of the applying attorney, the law enforcement agency conducting the investigation and a certification from the attorney “that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by that agency.” 18 U.S.C. §3122(b)(2). Once a complying application is received, the judicial scrutiny of the application is limited: “the court shall enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device within the jurisdiction of the court if the court finds that the attorney for the Government ...has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation.”

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<sup>3</sup>A trap and trace device is a “device or process which captures the incoming electronic or other impulses which identify the originating number of an instrument or device from which a wire or electronic communication was transmitted.” 18 U.S.C. §3127(4). A pen register is “a device which records or decodes electronic or other impulses which identify the numbers dialed or otherwise transmitted on the telephone line to which such device is attached...” 18 U.S.C. §3127(3).

18 U.S.C. §3123(a). Indeed, this provision “does not envision an independent judicial review of whether the application meets the relevance standard, rather the court needs only to review the completeness of the certification submitted.” *In re Application of the United States for an Order Authorizing the Installation and Use of a Pen Register and Trap and Trace Device*, 846 F.Supp. 1555, 1559 (M.D.Fl. 1994) (citing S.Rep. No. 541, 99<sup>th</sup> Cong., 2d Sess. 47, reprinted in 1986 U.S.C.C.A.N. 3555, 3601).

The other authority cited by the Government in its application, the SCA, authorizes phone companies to disclose the electronically stored records of phone numbers and subscriber information associated with phone calls to or from the land line telephone or cellular telephone upon a court’s finding of “specific and articulable facts” that “there are reasonable grounds to believe that the contents of a wire or electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation.” 18 U.S.C. §2703(d). The types of electronically stored records to be disclosed include disclosure of “a record or other information” pertaining to a subscriber or customer of the communication service and could include records of cell site locations assuming such records are, in fact, kept by the communication company. 18 U.S.C. §2703(b).

In the case of the present applications, the Magistrate Judge denied issuance of the requested orders not on the grounds that the applications were incomplete or otherwise not in compliance with the above-mentioned statutory provisions but because the applications sought information related to cell site location which, in the Magistrate Judge’s opinion, was unobtainable without the Government first obtaining a warrant pursuant to Fed.R.Crim.P. 41. The Government maintains that the Magistrate erred because the applications it submitted satisfied the combined requirements of

18 U.S.C. §3122 and 18 U.S.C. §2703(d) which is all that need be done for an order to issue.

According to the Magistrate Judge's Order, the Pen Register statute and the SCA must be read in conjunction with yet a third statute, the Communications Assistance for Law Enforcement Act of 1994 ("CALEA"), 47 U.S.C. §1002, which requires telecommunication carriers to ensure that they have the ability to provide law enforcement agencies with certain "call-identifying information that is reasonably available to the carrier..." 47 U.S.C. §1002(a)(2). This provision also contains an exception: "[W]ith regard to information acquired *solely* pursuant to the authority for pen registers and trap and trace devices (as defined in section 3127 of Title 18), such call-identifying information shall not include any information that may disclose the physical location of the subscriber..." 47 U.S.C. §1002(a)(2)(emphasis added).

The use of the word "solely" in the exception provision of the CALEA has created considerable dubiety in the courts concerning the appropriate application of the exception to cell site location information such as that requested here. The Government, consistent with its applications in other jurisdictions, contends that it is not seeking cell site information *solely* pursuant to the Pen Register Statute and cites to the provisions of the SCA as authority for obtaining cell site location information. The argument, known as the "hybrid theory," has found favor in some jurisdictions, see *In re Application ...Authorizing the Use of a Pen Register and Trap and Trace*, 405 F.Supp.2d 435 (S.D.N.Y. 2005). Advocates of this theory assert that use of the word "solely" by Congress demonstrates an intent that "'another' mechanism may be combined – albeit in some unspecified way – with the Pen Register Statute to authorize disclosure of cell site information." *Wisconsin Decision*, 412 F.Supp.2d at 954; see also *In re Application for Pen Register and Trap/Trace Device with Cell Site Location Authority*, 396 F.Supp.2d 747, 765 (S.D. Texas 2005). In the Government's

view, the SCA is the mechanism by which disclosure of cell site information can occur and then, the only legal threshold applicable is whether under the SCA, the Government has demonstrated “specific and articulable facts” that “there are reasonable grounds to believe that the contents of a wire or electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation.” 18 U.S.C. §2703(d).

In his Opinion and Order, the Magistrate Judge first concluded that the section 1002 exception prohibits reliance on the Pen Register Statute in any way for obtaining cell-site location information without first meeting the requirements for a warrant to issue pursuant to Fed.R.Crim.P. 41. Second, the Magistrate Judge rejected the Government’s reliance on the SCA in combination with the Pen Register Statute to obtain cell-site information upon a lesser showing of “specific and articulable facts” that the cell-site information is “relevant and material to an ongoing investigation.”

According to the Magistrate Judge:

Opponents of the hybrid theory reject this interpretation of the section 1002 exception by pointing out that ‘there is nothing in the express language of the Pen [Register] Statute, CALEA, or [SCA] which instructs judges to follow th[is] particular...theory...’ Indeed, the theory attributes to Congress the view that they could, by simply inserting the term ‘solely’ into the exception clause, splice together (through a labyrinthian analysis) fifteen years of separate statutory enactments. The proposition becomes even more dubious when it is asserted that that analysis yields a new and independent authority for obtaining cell site location information...

Order at p. 6 (internal citations omitted).

Nearly a dozen courts have examined applications similar to the ones presented here and at least seven of those courts have refused to issue the orders sought by the Government for reasons similar to, if not identical to, the reasoning of the Magistrate Judge in the present applications. *See In re Application of the United States for an Order: (1) Authorizing the Installation and Use of a Pen Register and Trap and Trace Device, and (2) Authorizing Release of Subscriber and Other*

*Information*, \_\_\_ F.Supp.2d \_\_\_, 2006 WL 1566166 (S.D.Texas April 11, 2006) (listing cases) (“S.D. Texas Decision”). As the Magistrate Judge noted, all of the courts that have done so have premised their conclusions on the exception contained in the CALEA as interpreted through the legislative history and the Congressional testimony offered by then-FBI director Louis Freeh. The aggregation of these sources has led to the conclusion that the exception was predicated on the FBI Director’s assertion to Congress that “pen register and trap and trace devices were not to be, and would not be, used to secure location information for the cellular phone user.” *Wisconsin Decision*, 412 F.Supp.2d at 956. Thus, these courts have rejected the Government’s attempts to obtain cell site location information since the very purpose of the request is to accomplish what Congress attempted to avoid, that is, permitting law enforcement to track individuals using cell location information. *Id.* at 958 (“[I]t makes no sense to me that, by the use of the word ‘solely’ in 47 U.S.C. §1002(a)(2), Congress was in some back-handed fashion intending to allow the SCA to be used in conjunction with the Pen [Register] Statute to obtain the very information that Director Freeh assured Congress he was not seeking the authority to obtain under the proposed legislation.”).

This Court has reviewed the extensive writing that has already been committed to resolving this issue in other jurisdictions and has also given the matter independent consideration. The conclusion reached is the same as that of the Magistrate Judge in his Order denying the applications, specifically: (1) the Government cannot rely on the Pen Register Statute to obtain cell site location information; and (2) converging the Pen Register Statute with the SCA in an attempt to circumvent the exception in the CALEA is contrary to Congress’ intent to protect cell site location information from utilization as a tracking tool absent probable cause under the Fourth Amendment. The legal rationale supporting these conclusions can be found in numerous opinions from other jurisdictions

and some from within our own, including the Magistrate Judge's Order and Opinion in this case. See *In re Application ...for an Order for Prospective Cell Site Location Info. on a Certain Cellular Tel.*, No. 06 CRIM MISC. 01, 2006 WL 468300 (S.D.N.Y. Feb. 28, 2006); *In re Application ...for Orders Authorizing the Installation and Use of Pen Registers and Caller Identification Devices ...*, 416 F.Supp.2d 390 (D.Md. Feb. 27, 2006); *In re the Application ...for an Order Authorizing the Installation and Use of a Pen Register and/or Trap and Trace*, \_\_\_ F.Supp.2d \_\_\_, No. 06-MJ-506, 2006 WL 354289 (W.D.N.Y. Feb. 15, 2006); *In the Matter of the Application of the United States of America for an Order Authorizing the Release of Prospective Cell Site Info.*, 407 F.Supp.2d 132 (D.D.C.2005); *In the Matter of the Application of the United States of America for an Order (1) Authorizing the Installation and Use of a Pen Register and Trap and Trace Device and (2) Authorizing Release of Subscriber Info. and/or Cell Site Info.*, 396 F.Supp.2d 294 (E.D.N.Y.2005); *In re Application for Pen Register and Trap/Trace Device With Cell Site Location and Auth.*, 396 F.Supp.2d 747 (S.D.Tex.2005).

This court places particular reliance on the *Wisconsin Decision* as it provides a detailed exposition of the reasoning of three other courts that have held as this court does today. There is little the undersigned could add to the analysis nor does it serve judicial economy to further elaborate on what has already been thoughtfully and extensively reasoned. As was stated in the *Wisconsin Decision* “[i]f Congress intended to allow prospective cell site information to be obtained by means of the combined authority of the SCA and the [Pen Register Statute], such intent is not at all apparent from the statutes themselves.” *Wisconsin Decision*, 412 F.Supp.2d at 958. Accordingly, the Appeal to the District Judge of the Magistrate Judge's Opinion and Order dated May 17, 2006 is DENIED. The Orders requested shall not issue in their present form. As indicated in the Magistrate Judge's

Order, the Government may: (1) resubmit the application without the request for cell site information;  
(2) resubmit the application to establish probable cause in accordance with Fed.R.Crim.P. 41(c)(4);  
or (3) appeal this decision to the Seventh Circuit Court of Appeals.<sup>4</sup>

SO ORDERED.

This 5<sup>th</sup> day of July, 2006

William C. Lee  
United States District Court  
Northern District of Indiana

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<sup>4</sup>*In re Application for Pen Register and Trap/Trace Device with Cell Site Location Authority*, 396 F.Supp.2d at 765 (expressing “the full expectation and hope that the government will seek appropriate review by higher courts so that authoritative guidance will be given the magistrate judges who are called upon to rule on these applications on a daily basis”).