



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: 07-4122

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

Dear Requester:

OCT 15 2008

Your request for records under the Freedom of Information Act/Privacy 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 Attorneys' 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.

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.

Enclosed please find:

18 page(s) are being released in full (RIF);
25 page(s) are being released in part (RIP);
0 page(s) are withheld in full (WIF).

This material is responsive to item number one (1) of your request. 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

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

Section 552a

<input checked="" type="checkbox"/> (j)(2)
<input type="checkbox"/> (k)(2)
<input type="checkbox"/> (k)(5)
<input type="checkbox"/> _____

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 cursive script that reads "Karen M. Gunnegan for". The signature is written in dark ink and is positioned above the printed name of the signatory.

William G. Stewart II
Assistant Director

Enclosure(s)

Requester: Catherine Crump
FOIA #: 07-4122

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. 07-4122 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.

February 2007

The Cell Site/Pen Register Working Group (including John Glang, Steve Jigger, Pete Axelrod and Tim Lucey) has been working on updated pen register applications and orders to address some recent cell site and other issues raised in the NDCA, and around the country.

The S Drive includes revised templates for an Application and proposed Order for the installation of a pen register and trap and trace device in this district. (Go to: S Drive/NDCA/Forms/Pen Register & Trap Form)

There are two forms (1) no cell-site information (either real-time or historical) and no GPS tracking information is being requested; and (2) cell-site information (either real-time or historical) and no GPS tracking information is being requested. [Presently there is no GPS form because there only two providers for GPS information and due to some more technical legal issues. If you need GPS information, please consult with the working group which can advise based on the facts of your case.]

For the **no-cell site and no-GPS form**, the templates are on the S Drive listed as:
PenApplication2007.standard.noncellorGPS.wpd ; and
PenOrder2007.standard.noncellorGPS.wpd

For the **cell site and no-GPS form**, the templates are on the S Drive listed as:
PenApplication2007.standard.cell.nonGPS.wpd ; and PenOrder2007.standard.cell.nonGPS.wpd)

Please note that the following changes have been made:

- (1) There is now only one proposed Order (for each form). The new Order provides that the identity of any targets of the investigation and the possible violations thereof may be redacted on the copy of the Order which is served on the service provider;

- (2) The itemized list of service providers (which is current) and the name of the investigating agency appear only once in each document. Inclusion of the list of

[b7E b7E]

- (3) Consistent with the amendment in the PATRIOT Act to 18 U.S.C. § 3123(b)(1)(C), the tracing operations authorized by the Order are without geographical limits;
- (4) Technical terms and acronyms such as "pen register", "trap and trace device", "VoIP", "ESNs", "SIMs", "IMSi", "IMEIs", and "UFMIs" are defined in footnotes in the Application;
- (5) There are separate Certifications in the Application under both 18 U.S.C. §§ 3122

and 3123 and 18 U.S.C. § 2703;

(6) [b7E
b7E
b7E]

(7) [b7E
b7E
b7E]

(8) [b7E
b7E]

(9) If you make any changes to the model forms [b7E
b7E] the judges have asked that modifications be highlighted in a cover letter.

We hope these forms are useful in your cases and investigations. Please let the Cell Site/Pen Register Working Group know of any constructive comments or suggestions you may have.

UNITED STATES DISTRICT COURT
DISTRICT OF _____

IN THE MATTER OF THE APPLICATION
OF THE UNITED STATES OF AMERICA
FOR AUTHORIZATION TO OBTAIN LOCATION
DATA CONCERNING A CELLULAR TELEPHONE
ASSIGNED CALL NUMBER (xxx) xxx-xxxx,
WITH [INTERNATIONAL MOBILE SUBSCRIBER
IDENTITY / ELECTRONIC SERIAL NUMBER]
XXXXXXXXXXXXXXXXXXXX

UNDER SEAL

AFFIRMATION IN
SUPPORT OF
APPLICATION

STATE OF _____)
COUNTY OF _____ : ss.:
_____ DISTRICT OF _____)

_____, a Special Agent with the _____, being duly
sworn, deposes and states:

INTRODUCTION

1. I am a "federal law enforcement officer" within
the meaning of Federal Rule of Criminal Procedure 41(a)(2)(C),
that is, a government agent engaged in enforcing the criminal
laws and duly authorized by the Attorney General to request a
search warrant. I have been a _____ agent since _____. I have
participated in investigations of _____ and, among other
things, have conducted or participated in surveillances, the
execution of search warrants, debriefings of informants and
reviews of taped conversations. Through my training, education
and experience, I have become familiar with the manner in which
_____.

2. I submit this affidavit in support of an
application for an order pursuant to Federal Rule of Criminal

Procedure 41 [OPTIONAL: and 18 U.S.C. 2703(c)(1)(A)] [see cover instructions], directing [carrier] to assist agents of the _____ by providing all information, facilities and technical assistance needed to ascertain the physical location of the cellular telephone assigned call number (xxx) xxx-xxxx, with [International Mobile Subscriber Identity /Electronic Serial Number] xxxxxxxxxxxxxxxx, subscribed to in the name _____ at _____ [address]____, with service provided by [carrier] (the "TARGET CELLPHONE"), including but not limited to data indicating the specific latitude and longitude of (or other precise location information concerning) the TARGET CELLPHONE (the "Requested Information"),¹ for a period of thirty (30) days.

3. I have personally participated in the investigation set forth below. I am familiar with the facts and circumstances of the investigation through my personal participation; from discussions with other agents of the _____ and other law enforcement; from my discussions with witnesses involved in the investigation; and from my review of records and

¹Such information may, where other information is unavailable, include records reflecting the tower and antenna face ("cell site") used by the TARGET CELLPHONE at the start and end of any call. In requesting cell site information, the Government does not concede that such cell site records - routinely retained by wireless carriers as business records - may only be obtained via a warrant issued on probable cause. See In re Application, 460 F. Supp. 2d 448 (S.D.N.Y. 2006) (authorizing prospective acquisition of cell-site records under combined authority of 18 U.S.C. 2703(d) & 3121 et seq.).

reports relating to the investigation. Unless otherwise noted, wherever in this affidavit I assert that a statement was made, the information was provided by another ____ agent, law enforcement officer or witness who may have had either direct or hearsay knowledge of that statement and to whom I or others have spoken or whose reports I have read and reviewed. Such statements are among many statements made by others and are stated in substance and in part unless otherwise indicated. Since this affidavit is being submitted for the limited purpose of securing an order authorizing the acquisition of the Requested Information, I have not included details of every aspect of the investigation. Facts not set forth herein, or in the attached exhibits, are not being relied on in reaching my conclusion that the requested order should be issued. Nor do I request that this Court rely on any facts not set forth herein in reviewing this application.

4. Probable cause exists to believe that the Requested Information will lead to evidence of offenses involving _____, in violation of _____ (the "TARGET OFFENSES"), as well as the identification of individuals who are engaged in the commission of these offenses.

5. For the reasons set out in this affidavit, there is probable cause to believe that the TARGET OFFENSES have been committed, are being committed, and will continue to be committed

by _____ and others unknown. [Further, there is probable cause to believe that _____ is using the TARGET CELLPHONE to commit the TARGET OFFENSES.]

Background of the Investigation

6. This application is submitted in connection with a _____ investigation of _____.

7. Based on information obtained from _____, _____ regularly carries the TARGET CELLPHONE [and uses it to conduct illegal activities].

8. The investigation, through, among other things, the use of confidential sources and _____, has revealed, among other things, that _____ and others are engaged in _____.
[Set forth facts tying target cellphone to illegal activities.]

AUTHORIZATION REQUEST

9. Based on the foregoing, there is probable cause to believe that the Requested Information will lead to evidence regarding the activities described above. [OPTIONAL: IF 2703(c)(1)(A) NOT RELIED UPON - SEE COVER INSTRUCTIONS & ¶¶ 2 & 10 - THEN SET FORTH BASIS FOR BELIEVING THAT TARGET CELLPHONE IS WITHIN THE DISTRICT OF THE ISSUING COURT.] The Requested Information is necessary to determine the approximate location of _____ so that [e.g., law enforcement agents can conduct physical

surveillance of _____ in connection with this expected transaction].

10. WHEREFORE, pursuant to Federal Rule of Criminal Procedure 41 [OPTIONAL: and 18 U.S.C. 2703(c)(1)(A)] [see cover instructions], it is requested that the Court issue a warrant and Order authorizing the acquisition of the Requested Information and directing [carrier], the service provider for the TARGET CELLPHONE, to furnish the technical assistance necessary to accomplish the acquisition unobtrusively, and with a minimum of interference with such services as that provider accords the user(s) of the TARGET CELLPHONE, for a period of thirty (30) days. Reasonable expenses incurred pursuant to this activity will be processed for payment by the _____.

11. IT IS FURTHER REQUESTED that the Court authorize execution of the warrant at any time of day or night, owing to the potential need to locate the TARGET CELLPHONE outside of daytime hours.

12. IT IS FURTHER REQUESTED that the warrant and this affirmation, as it reveals an ongoing investigation, be sealed until further order of the Court in order to avoid premature disclosure of the investigation, guard against fugitives, and better ensure the safety of agents and others, except that working copies should be made available to the United States

Attorney's Office, the ____, and any other law enforcement agency designated by the United States Attorney's Office.

13. IT IS FURTHER REQUESTED that, pursuant to 18 U.S.C. 3103a(b) and Federal Rule of Criminal Procedure 41(f)(3), the Court authorize notice to be delayed for a period of [INSERT NUMBER NO GREATER THAN 30; SEE ALSO COVER SHEET] days after the termination of the execution of the warrant.

Special Agent

Sworn to before me this
____ day of ____ 2007

UNITED STATES MAGISTRATE JUDGE
____ DISTRICT OF _____

UNITED STATES DISTRICT COURT
DISTRICT OF

IN THE MATTER OF THE APPLICATION
OF THE UNITED STATES OF AMERICA
FOR AUTHORIZATION TO OBTAIN LOCATION
DATA CONCERNING A CELLULAR TELEPHONE
ASSIGNED CALL NUMBER (xxx) xxx-xxxx,
WITH [INTERNATIONAL MOBILE SUBSCRIBER
IDENTITY / ELECTRONIC SERIAL NUMBER]
XXXXXXXXXXXXXXXXXXXX

SEALED ORDER

Application having been made by the United States for
an Order pursuant to Federal Rule of Criminal Procedure 41
[OPTIONAL: and 18 U.S.C. 2703(c)(1)(A)] [see cover instructions],
directing [carrier] to assist agents of the _____ by providing
all information, facilities and technical assistance needed to
ascertain the physical location of the cellular telephone
assigned call number (xxx) xxx-xxxx, with [International Mobile
Subscriber Identity / Electronic Serial Number] xxxxxxxxxxxxxxxx,
subscribed to in the name _____ at _____[address]_____, with
service provided by [carrier] (the "TARGET CELLPHONE"), including
but not limited to data indicating the specific latitude and
longitude of (or other precise location information concerning)
the TARGET CELLPHONE (the "Requested Information"), for a period
of thirty (30) days;

The Court finds that there is probable cause to believe that
the Requested Information will lead to evidence of violations of
Title __, United States Code, Sections __ and __, among other

offenses, as well as to the identification of individuals who are engaged in the commission of these offenses.

IT IS HEREBY ORDERED pursuant to Federal Rule of Criminal Procedure 41 [OPTIONAL: and 18 U.S.C. 2703(c)(1)(A)] [see cover instructions] that [carrier], beginning at any time within ten (10) days of the date of this Order and for a period not to exceed 30 days from the date of this Order, provide to agents of the _____ the Requested Information concerning the TARGET CELLPHONE, with said authority to extend to any time of the day or night as required, including when the TARGET CELLPHONE leaves the _____ District of _____; all of said authority being expressly limited to ascertaining the physical location of the TARGET CELLPHONE and expressly excluding the contents of any communications conducted by the user(s) of the TARGET CELLPHONE.

It is further ORDERED that the _____ compensate [carrier] for reasonable expenses incurred in complying with any such request.

It is further ORDERED that agents of the _____ and other law enforcement officers and persons authorized to provide them with necessary and technical assistance are authorized to acquire the Requested Information concerning the location of the TARGET CELLPHONE for a period of thirty (30) days from the date of this Order or until the goals of the investigation have been achieved.

It is further ORDERED that the Court's Order and the accompanying Affirmation submitted in support thereof, as they

reveal an ongoing investigation, be sealed until further Order of the Court in order to avoid premature disclosure of the investigation, guard against fugitives, and better ensure the safety of agents and others, except that copies of the Court's Order in full or redacted form may be maintained by the United States Attorney's Office, and may be served on Special Agents and other investigative and law enforcement officers of the ____, federally deputized state and local law enforcement officers, and other government and contract personnel acting under the supervision of such investigative or law enforcement officers, and [carrier] as necessary to effectuate the Court's Order.

It is further ORDERED that this warrant be returned to the issuing judicial officer within 10 days after the termination of the execution of the warrant.

It is further ORDERED that, pursuant to 18 U.S.C. 3103a(b) and Federal Rule of Criminal Procedure 41(f)(3), service of notice may be delayed for a period of [INSERT NUMBER NO GREATER THAN 30; SEE ALSO COVER SHEET] days after the termination of the execution of the warrant.

It is further ORDERED that [carrier], its affiliates, officers, employees, and agents not disclose the Court's Order or the underlying investigation, until notice is given as provided above.

Dated: _____, _____
_____ day of _____ 2007

Time: _____

UNITED STATES MAGISTRATE JUDGE
____ DISTRICT OF _____

AO

(Rev.
8/97)

WARRANT ON WRITTEN AFFIDAVIT FOR CELL PHONE LOCATION DATA

United States District Court	DISTRICT ____ District of ____	
UNITED STATES OF AMERICA v. PREMISES KNOWN AND DESCRIBED AS A CELLULAR TELEPHONE ASSIGNED CALL NUMBER (xxx) xxx-xxxx, WITH [INTERNATIONAL MOBILE SUBSCRIBER IDENTITY / ELECTRONIC SERIAL NUMBER] XXXXXXXXXXXXXXXXXXXX	DOCKET NO.	MAGISTRATE'S CASE NO.
	To: ANY AUTHORIZED FEDERAL AGENT	
<p>Affidavit having been made before me by the below-named affiant to obtain precise location information concerning the following cell phones (the "Premises"):</p> <p>A CELLULAR TELEPHONE ASSIGNED CALL NUMBER (xxx) xxx-xxxx, WITH [INTERNATIONAL MOBILE SUBSCRIBER IDENTITY / ELECTRONIC SERIAL NUMBER] XXXXXXXXXXXXXXXXXXXX</p> <p>and as I am satisfied that there is good cause for the acquisition of precise location information concerning the Premises,</p> <p>YOU ARE HEREBY COMMANDED to acquire precise location data concerning the Premises named above for a period of thirty (30) days starting within ten (10) calendar days of the date of this order, during any time of day; to return this warrant to the <u>U.S. Magistrate Judge</u> designated in this warrant within ten (10) calendar days after the execution of the warrant has ended; and pursuant to 18 U.S.C. § 3103a(b)(3) authorizing delayed notification, to serve notice within [INSERT NUMBER NO GREATER THAN 30; SEE ALSO COVER SHEET] after the execution of the warrant has ended.</p>		
NAME OF AFFIANT Special Agent _____	SIGNATURE OF JUDGE OR U.S. MAGISTRATE	DATE/TIME ISSUED

RETURN

DATE AND TIME ACQUISITION OF LOCATION DATA FIRST INITIATED AND PERIOD DURING WHICH IT WAS ACQUIRED:

CERTIFICATION

I swear that this information contained on this return is true and accurate:

Subscribed, sworn to, and returned before me this date.

Federal Judge or U.S. Magistrate

Date

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION
4

5 IN RE TELEPHONE) No.
6 INFORMATION NEEDED FOR A)
7 CRIMINAL INVESTIGATION) SEALED ORDER

8 Before this Court is an Application under 18 U.S.C. §§ 2703(c), 2703(d), 3122, and 3123,
9 by Assistant United States Attorney [Name of AUSA], an attorney for the Government as
10 defined by Fed. R. Crim. P. 1(b)(1)(B), requesting an Order authorizing the [installation and]
11 [continued] use of a pen register and trap and trace device on the instrument or facility currently
12 utilizing the following subject telephone number, (hereinafter, the "Target Device"):

13 Telephone number: _____
14 Service provider: _____
15 Subscriber: _____
16 Address: _____

17 Upon review of the Application, the Court hereby FINDS that:

18 Pursuant to 18 U.S.C. § 3123, Applicant has certified that the information likely to be
19 obtained by such use is relevant to an ongoing criminal investigation being conducted by the
20 [insert name of agency] (hereinafter the "Investigative Agency") in connection with possible
21 violations of [insert code sections] by [list names of targets] and others.

22 Pursuant to 18 U.S.C. §§ 2703(c)(1)(B) and 2703(d), Applicant has offered specific and
23 articulable facts showing that there are reasonable grounds to believe that records or other
24 information identifying subscribers or customers (not including the contents of communications)
25 for telephone numbers identified through the pen register and trap and trace devices on the Target
26 Device, changes in service regarding the Target Device, and records or other information
27 pertaining to subscriber(s) or customer(s) (but not including the contents of communications) for
28 the Target Device are relevant and material to an ongoing criminal investigation of the specified
offenses.

THEREFORE, IT IS HEREBY ORDERED, pursuant to 18 U.S.C. § 3123, that agents of

SEALED ORDER

1 the Investigative Agency may **[install, or cause to be installed, and] [continue to]** use a pen
2 register to record or decode dialing, routing, addressing, or signaling information transmitted¹
3 from the Target Device, to record the date and time of such dialings or transmissions, and to
4 record the length of time the telephone receiver in question is "off the hook" or connected for
5 incoming or outgoing calls and attempts, for a period of sixty (60) days from the date this Order
6 is filed by the Court,² provided, however, that such information shall not include the contents of
7 any communication;

8 IT IS FURTHER ORDERED, pursuant to 18 U.S.C. § 3123, that agents of the
9 Investigative Agency may **[install, or cause to be installed, and] [continue to]** use a trap and
10 trace device on the Target Device to capture and record the incoming electronic or other impulses
11 which identify the originating numbers or other dialing, routing, addressing, or signaling
12 information³ reasonably likely to identify the source of a wire or electronic communication, and
13 to record the date, time, and duration of calls created by such incoming impulses, for a period of
14 sixty (60) days from the date this Order is filed by the Court, provided, however, that such
15 information shall not include the contents of any communication;

16 IT IS FURTHER ORDERED, pursuant to 18 U.S.C. §§ 2703(c)(1)(B), 2703(c)(2),
17 2703(d), 3122, and 3123 that Adelphia Communications, Adelphia Long Distance, Allegiance
18 Telecom of California, Inc., Astound, AT&T California, AT&T Local Service, AT&T Long
19 Distance, AT&T Midwest, AT&T Nevada, AT&T Southwest, Bell South Telecommunications,
20 Broadwing Communications, Cellco Partnership doing business as Verizon Wireless, Cellular
21 One, Central Wireless Partnership doing business as Sprint PCS, Cingular Wireless, Comcast,

22
23
24
25
26 ² As used herein, "the date this Order is filed by the Court" is the date indicated by
27 the clerk's file stamp on the first page of the Order.

28 ³ This includes the same information described in footnote 2 above,

1 Cox Communications, Dobson Cellular, Dobson Communications, Edge Wireless LLC, Electric
2 Lightwave Inc., Embarq, Ernest Communications, Evans Telephone Company, Frontier: A
3 Citizens Communications Company, Genesis Communications International, ICG
4 Communications, ICG Telecom Group, Locus Communications, Metrocall, Metro PCS,
5 Mpower, Nationwide Paging, Navigator Telecommunications LLC, Network Services LLC,
6 Nextel Communications, NII Communications, Pac West Telecomm Incorporated, Qwest
7 Communications, RCN Communications, Roseville Telephone Company, Skype, Sprint-Nextel,
8 TelePacific Communications, Teligent, Time-Warner Telecom, T-Mobile USA Inc., USA
9 Mobility, US Cellular, US TelePacific Corp. doing business as TelePacific Communications,
10 Verizon California, Verizon District of Columbia, Verizon Maryland, Verizon New Jersey,
11 Verizon New York, Verizon Northwest, Verizon Texas, Vonage, Weblink Wireless, West Coast
12 PCS LLC doing business as Sure West Wireless, Western Wireless Corporation, XO
13 Communications, and any and all other telephone service providers (including any Internet
14 service provider or other electronic communications provider providing voice-over IP telephony
15 [VoIP]) (collectively, "the Telephone Service Providers"), and any and all other persons or
16 entities providing wire or electronic communications service in the United States whose
17 assistance may facilitate the execution of this Order, shall disclose or provide, upon oral or
18 written demand by agents of the Investigative Agency:

19 1. For the Target Device, records or other information pertaining to subscriber(s) or
20 customer(s), including toll or call detail records [b7E] for
21 the sixty (60) days prior to the date this Order is filed by the Court (but not including the contents
22 of communications);

23 2. Pursuant to 18 U.S.C. § 2703(c), after receipt and storage⁴, the following
24 subscriber records and other information for all published, non-published, or unlisted dialing,
25 routing, addressing, or signaling information captured by the pen register and trap and trace
26 device on the Target Device:

27 ⁴ "After receipt and storage" is intended to ensure that the information authorized
28 under subsection 2 herein is information that is first captured and recorded by the provider before
being sent to the Investigative Agency.

- (i) name;
(ii) address;
(iii) local and long distance telephone connection records, or records of session times and durations with Target Device;
(iv) length of service (including start date) and types of service utilized; and
(v) telephone or instrument number or other subscriber number or identity including any temporarily assigned network address; and

3. Any and all changes (including additions, deletions, and transfers) in service regarding the Target Device, including telephone numbers; other unique identifiers such as

b7E

IT IS FURTHER ORDERED that this authorization for the [installation and] [continued] use of a pen register and trap and trace device applies not only to the Target Device,

b7E

b7E

b7E [Target Device within the 60-day period authorized by this Order and further, that, pursuant to 18 U.S.C. § 3123(b)(1)(C), the tracing operations authorized by this Order be without geographical limits.

IT IS FURTHER ORDERED, pursuant to 18 U.S.C. §§ 3123(a)(1) and § 3123 (b)(2), that, upon service of this Order, the Target Device's Telephone Service Providers shall furnish agents of the Investigative Agency with all information, facilities, and technical assistance necessary to accomplish the installation and use of the pen register and trap and trace devices, unobtrusively and with minimum interference with the services that are accorded the persons with respect to whom the installation and use is to take place.

IT IS FURTHER ORDERED that the Target Device's Telephone Service Providers shall furnish the results of the pen register and trap and trace devices to agents of the Investigative

1 Agency as soon as practicable, twenty four (24) hours a day for the duration of the Order.

2 IT IS FURTHER ORDERED that the Target Device's Telephone Service Providers be
3 reasonably compensated by the Investigative Agency for reasonable expenses directly incurred in
4 providing information, facilities, and assistance.

5 Good cause having been shown, IT IS FURTHER ORDERED, pursuant to 18 U.S.C. §§
6 2705(b) and 3123(d), that this Order and the Application be SEALED until otherwise ordered by
7 the Court, that the identity of any targets of the investigation and the possible violations thereof
8 may be redacted from any copy of the Order served on any service provider or other person, and
9 that the Target Device's Telephone Service Providers and any other Telephone Service Provider
10 which provides service to a telephone number that either places telephone calls to, or receives
11 telephone calls from, the Target Device, shall not disclose in any manner, directly or indirectly,
12 by any action or inaction, the existence of this Order, in full or redacted form, of the
13 pen register or trap and trace devices, or of this investigation, to the listed subscribers for the

14 ///

15 ///

16 Target Device, or to any other person unless otherwise ordered by this Court.

17
18 _____
19 DATE

UNITED STATES MAGISTRATE JUDGE

1 JOSEPH P. RUSSONIELLO (CABN 44332)
United States Attorney

2 BRIAN J. STRETCH (CABN 163973)
3 Chief, Criminal Division

4 AUSA (CABN _____)
Assistant United States Attorney

5 450 Golden Gate Ave., Box 36055
6 San Francisco, California 94102
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9 Attorneys for Applicant

10
11 UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION
14

15 IN RE TELEPHONE
16 INFORMATION NEEDED FOR A
CRIMINAL INVESTIGATION

No.

APPLICATION

17 }
18 } (UNDER SEAL)

19 A. INTRODUCTION

20 I, [Name of AUSA], an Assistant United States Attorney in the Northern District of
21 California, hereby apply to the Court for an order:

22 1. Pursuant to 18 U.S.C. §§ 3122 and 3123, authorizing the [installation and]
23 [continued] use of a pen register and trap and trace device,¹ on the instrument or facility

24 _____
25 ¹ A "pen register" is a "device or process which records or decodes dialing, routing,
26 addressing, or signaling information transmitted by an instrument or facility from which a wire or
27 electronic communication is transmitted, provided, however, that such information shall not include
28 the contents of any communication ..." 18 U.S.C. § 3127(3). A "trap and trace device" is "a device
or process which captures the incoming electronic or other impulses which identify the originating
number" or other identifiers "reasonably likely to identify the source of a wire or electronic
communication, provided, however, that such information not include the contents of any

APPLICATION (UNDER SEAL)

1 currently utilizing the following subject telephone number(s), (hereinafter, the "Target Device"):

2 Telephone number: _____

3 Service provider: _____

4 Subscriber: [optional] _____

5 Address: [optional] _____

6 2. Pursuant to 18 U.S.C. §§ 2703(c), 2703(d), 3122, and 3123, directing Adelphia
7 Communications, Adelphia Long Distance, Allegiance Telecom of California, Inc., Astound,
8 AT&T California, AT&T Local Service, AT&T Long Distance, AT&T Midwest, AT&T Nevada,
9 AT&T Southwest, Bell South Telecommunications, Broadwing Communications, Cellco
10 Partnership doing business as Verizon Wireless, Cellular One, Central Wireless Partnership
11 doing business as Sprint PCS, Cingular Wireless, Comcast, Cox Communications, Dobson
12 Cellular, Dobson Communications, Edge Wireless LLC, Electric Lightwave Inc., Embarq, Ernest
13 Communications, Evans Telephone Company, Frontier: A Citizens Communications Company,
14 Genesis Communications International, ICG Communications, ICG Telecom Group, Locus
15 Communications, Metrocall, Metro PCS, Mpower, Nationwide Paging, Navigator
16 Telecommunications LLC, Network Services LLC, Nextel Communications, NII
17 Communications, Pac West Telecomm Incorporated, Qwest Communications, RCN
18 Communications, Roseville Telephone Company, Skype, Sprint-Nextel, TelePacific
19 Communications, Teligent, Time-Warner Telecom, T-Mobile USA Inc., USA Mobility, US
20 Cellular, US TelePacific Corp. doing business as TelePacific Communications, Verizon
21 California, Verizon District of Columbia, Verizon Maryland, Verizon New Jersey, Verizon New
22 York, Verizon Northwest, Verizon Texas, Vonage, Weblink Wireless, West Coast PCS LLC
23 doing business as Sure West Wireless, Western Wireless Corporation, XO Communications, and
24 any and all other telephone service providers² (including any Internet service provider or other

25 _____
26 communication." 18 U.S.C. § 3127(4).
27
28

1 [b7E]
2 b7E
3 b7E]
4 a. For the Target Device, records or other information pertaining to
5 subscribers or customers, including cell site information⁴ and toll or call detail records⁵
6 [b7E] for the sixty (60) days prior to the date the Order is
7 filed by the Court⁶ (but not including the contents of communications).

8 b. For the Target Device, after receipt and storage,⁷ records or other
9 information pertaining to subscribers or customers, including (1) the means and source of
10 _____
11 carrier, but the telephone number and subscriber information remain the same.

12 ³ VoIP is essentially a type of hardware and/or software (provided, for example, by
13 Qwest Communications, SBC Communications, Sprint-Nextel, and Verizon Wireless) that allows
14 people to use the Internet as a transmission medium for telephone calls. In general, this means
15 sending voice information in the form of digital packets of information rather than sending it through
16 the traditional public switch telephone network.

17 ⁴ A cell phone must send a radio signal to an antenna tower which, in turn, is connected
18 to the provider's network. The area covered by the tower varies depending, inter alia, on the
19 population density of the area. This area is often divided into thirds, or 120 degree sectors. "Cell
20 site information" as used in this Application refers to the antenna tower and sector to which the cell
21 phone sends its signal. This includes the physical location and/or address of the cellular tower and
22 identification of the particular sector of the tower receiving the signal. This information does not
23 provide the specific or precise geographical coordinates of the Target Device.

24 ⁵ [b7E]
25 ⁶ As used herein, "the date the Order is filed by the Court" is the date indicated by
26 the clerk's file stamp on the first page of the Order.

27 ⁷ "After receipt and storage" is intended to ensure that the information authorized
28 under paragraphs 2b and 2c is information that is first captured and recorded by the provider
before being sent to the Investigative Agency.

1 payment for the service and (2) cell site information, provided to the United States for (a) the
2 origination of a call from the Target Device or the answer of a call to the Target Device and (b)
3 the termination of the call (but not including the contents of the communications.)

4 c. Pursuant to 18 U.S.C. § 2703(c), after receipt and storage, the following
5 subscriber records and other information for all published, non-published, or unlisted dialing,
6 routing, addressing, or signaling information captured by the pen register and trap and trace
7 device on the Target Device:

- 8 (i) name;
- 9 (ii) address;
- 10 (iii) local and long distance telephone connection records, or records of
11 session times and durations with Target Device;
- 12 (iv) length of service (including start date) and types of service utilized;
13 and
- 14 (v) telephone or instrument number or other subscriber number or
15 identity, including any temporarily assigned network address; and

16 d.

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b7E

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19 8 [b7E]

20 9 b7E

22 b7E

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27 10 b7E
28 b7E
b7E
b7E

published, listed, or unlisted) associated with these service changes.

3. This Application does not seek (1) E b7E

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B. CERTIFICATION PURSUANT TO 18 U.S.C. §§ 3122 AND 3123

4. 18 U.S.C. § 3122(b)(2) provides that a court may issue an order for a pen register or a trap or trace device when an attorney for the government certifies that "the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by (a law enforcement agency.)" In support of this Application, I state the following:

5. I am an "attorney for the Government" as defined in Rule 1(b)(1)(B) of the Federal Rules of Criminal Procedure, and therefore, pursuant to 18 U.S.C. § 3122, may apply for an order authorizing the installation and use of pen registers and trap and trace devices.

6. I certify that the information likely to be obtained from the pen register and trap and trace device on the Target Device is relevant to an ongoing criminal investigation being conducted by the Investigative Agency in connection with possible violations of federal criminal statutes, including [insert code sections] by [list names of targets] and others.

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b7E

b7E]

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b7E

b7E

1 7. Therefore, based upon the above Certification, and pursuant to 18 U.S.C. §§ 3122
2 and 3123, I request that the Court issue an order authorizing:

3 a. The Investigative Agency [to install, or cause the provider to install,
4 and use,] [to continue to use] a pen register device to record or decode dialing, routing,
5 addressing, or signaling information transmitted¹³ from the Target Device, to record the date and
6 time of such dialings or transmissions, and to record the length of time the telephone receiver in
7 question is "off the hook" or connected for incoming or outgoing calls, for a period of sixty (60)
8 days from the date the order is filed by the Court.

9 b. The Investigative Agency [to install, or cause the provider to install,
10 and use,] [to continue to use] a trap and trace device on the Target Device to capture and record
11 the incoming electronic or other impulses which identify the originating numbers or other
12 dialing, routing, addressing, or signaling information¹⁴ reasonably likely to identify the source of
13 a wire or electronic communication and to record the date, time, and duration of calls created by
14 such incoming impulses, for a period of sixty (60) days from the date the Order is filed by the
15 Court.

16 c. That, pursuant to 18 U.S.C. § 3123(b)(1)(c), the requested [installation
17 and use] [continued use] of a pen register and trap and trace device permit the use of each not
18 only on the Target Device, but also [b7E]

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This includes the same information described in footnote 13 above.

b7E

8. I further request, pursuant to 18 U.S.C. §§ 3123(a)(1) and 3123(b)(2), that the Order direct that the furnishing of information, facilities, and technical assistance necessary to accomplish the installation and operation of the pen register and trap and trace device by the Target Device's Telephone Service Providers (including any Internet service provider or other electronic communications provider providing VoIP), and any and all other telephone service providers, persons, or entities providing wire or electronic communications service in the United States whose assistance may facilitate the execution of the Order, occur unobtrusively and with a minimum of interference with the services that are accorded the persons with respect to whom the installation and use is to take place, with reasonable compensation to be paid by the Investigative Agency for reasonable expenses directly incurred in providing such information, facilities, and assistance.

9. I further request that the Order direct the Telephone Service Providers to furnish the results of the pen register and trap and trace devices to agents of the Investigative Agency as soon as practicable, twenty-four (24) hours a day for the duration of the order.

C. COMPLIANCE WITH 18 U.S.C. § 2703

10. 18 U.S.C. § 2703(d) provides that a court may issue an order authorizing disclosure of a record or other information pertaining to a telephone subscriber or customer (not including the contents of communications) when a United States agency provides the Court with "specific and articulable facts showing that there are reasonable grounds to believe that ... the records or other information sought, are relevant and material to an ongoing criminal investigation." 18 U.S.C. § 2703(d).

11. For the purposes of obtaining a court order for disclosure as described in 18 U.S.C. §§ 2703(c)(1)(B) and 2703(c)(2), and in order to satisfy the requirements of 18 U.S.C. § 2703(d), Applicant, based on discussions with agents of the Investigative Agency, hereby sets forth the following specific and articulable facts that they have provided to me showing that there

1 are reasonable grounds to believe that the records and other information identifying subscribers
2 (but not including the contents of communications) for telephone numbers identified through the
3 pen register and trap and trace device on the Target Device, cell site information regarding the
4 Target Device, subscriber information associated with any service changes regarding the Target
5 Device, and the records or other information pertaining to subscribers (but not including the
6 contents of communications) for the Target Device will be relevant and material to an ongoing
7 criminal investigation:

8 [b7E]
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10 b7E
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12]
13 12. Agents of the Investigative Agency have advised Applicant that, based upon their
14 training and experience, [b2 + b7E]
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16 b2 + b7E
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19 b2 + b7E
20 [b2 + b7E]

21 13. Obtaining the information specified in paragraph 2c above is critical to accurately
22 identifying such subscribers because, among other things:

23 a.

24 b2 b7E
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26 b.
27 b2 b7E
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5 14. The investigating agents have further advised me that the [b2 b7E]
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10 15. Agents believe, based on these facts and their training and experience, that the
11 Target Device is currently being used to conduct criminal activities in violation of federal law.
12 Pursuant to 18 U.S.C. §§ 2703(c)(1)(B), 2703(d), 3122, and 3123, there are reasonable grounds
13 to believe that the specific and articulable facts, discussed above, show that the records and
14 information sought are relevant and material to an ongoing criminal investigation.

15 16. I therefore request that the Court issue an Order requiring that the Target
16 Device's Telephone Service Providers disclose, or provide upon oral or written request by agents
17 of the Investigative Agency, the information set forth above in paragraph 2.

18 17. The undersigned represents, upon information and belief, the Target Device
19 [has/has not] been the subject of prior order[s] entered by this Court on _____.

20 D. REQUEST FOR NON-DISCLOSURE AND SEALING

21 18. Based upon the information provided in this Application, I believe that
22 disclosure of the requested Order may result in flight from potential prosecution or the
23 destruction of, or tampering with evidence, or may otherwise seriously jeopardize the
24 investigation. Moreover, the exact nature of the government's pen register device and its
25 configuration is classified as a law enforcement sensitive investigative technique, the disclosure
26 of which would likely jeopardize other ongoing investigations and/or future use of the technique.
27 Therefore, pursuant to 18 U.S.C. §§ 2705(b) and 3123(d), I request that this Application and
28 Order be sealed, that the identity of any targets of the investigation and the possible violations

1 thereof may be redacted from any copy of the Order served on any telephone service provider or
2 other person, and that the Court direct the Telephone Service Providers and any other Telephone
3 Service Provider which provides service to a telephone number that either places telephone calls
4 to, or receives telephone calls from, the Target Device, not to disclose in any manner, directly or
5 indirectly, by any action or inaction, the existence of the Order, in full or redacted form,
6 regarding the pen register or trap and trace devices, or of this investigation, to the listed
7 subscriber(s) for the Target Device, the occupants of said premises, the subscribers of the
8 incoming calls to or outgoing calls from the Target Device, or to any other person until otherwise
9 ordered by this Court.

10 I declare under penalty of perjury that the foregoing factual assertions are true and correct
11 to the best of my knowledge and belief.

12 Dated: _____

Respectfully submitted,

13 JOSEPH P. RUSSONIELLO
14 United States Attorney

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16 Assistant United States Attorney
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11 UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION
14

15 IN RE TELEPHONE) No.
16 INFORMATION NEEDED FOR A) APPLICATION
17 CRIMINAL INVESTIGATION)
18 _____) (UNDER SEAL)

19 A. INTRODUCTION

20 I, [Name of AUSA], an Assistant United States Attorney in the Northern District of
21 California, hereby apply to the Court for an order:

22 1. Pursuant to 18 U.S.C. §§ 3122 and 3123, authorizing the [installation and]
23 [continued] use of a pen register and trap and trace device,¹ on the instrument or facility
24 _____

25 ¹ A "pen register" is a "device or process which records or decodes dialing, routing,
26 addressing, or signaling information transmitted by an instrument or facility from which a wire or
27 electronic communication is transmitted, provided, however, that such information shall not include
28 the contents of any communication ..." 18 U.S.C. § 3127(3). A "trap and trace device" is "a device
or process which captures the incoming electronic or other impulses which identify the originating
number" or other identifiers "reasonably likely to identify the source of a wire or electronic
communication, provided, however, that such information not include the contents of any

APPLICATION (UNDER SEAL)

1 currently utilizing the following subject telephone number(s), (hereinafter, the "Target Device"):

2 Telephone number: _____

3 Service provider: _____

4 Subscriber: _____

5 Address: _____

6 2. Pursuant to 18 U.S.C. §§ 2703(c), 2703(d), 3122, and 3123, directing Adelphia
7 Communications, Adelphia Long Distance, Allegiance-Telecom of California, Inc., Astound,
8 AT&T California, AT&T Local Service, AT&T Long Distance, AT&T Midwest, AT&T Nevada,
9 AT&T Southwest, Bell South Telecommunications, Broadwing Communications, Cellco
10 Partnership doing business as Verizon Wireless, Cellular One, Central Wireless Partnership
11 doing business as Sprint PCS, Cingular Wireless, Comcast, Cox Communications, Dobson
12 Cellular, Dobson Communications, Edge Wireless LLC, Electric Lightwave Inc., Embarq, Ernest
13 Communications, Evans Telephone Company, Frontier: A Citizens Communications Company,
14 Genesis Communications International, ICG Communications, ICG Telecom Group, Locus
15 Communications, Metrocall, Metro PCS, Mpower, Nationwide Paging, Navigator
16 Telecommunications LLC, Network Services LLC, Nextel Communications, NII
17 Communications, Pac West Telecomm Incorporated, Qwest Communications, RCN
18 Communications, Roseville Telephone Company, Skype, Sprint-Nextel, TelePacific
19 Communications, Teligent, Time-Warner Telecom, T-Mobile USA Inc., TracFone Wireless,
20 USA Mobility, US Cellular, US TelePacific Corp. doing business as TelePacific
21 Communications, Verizon California, Verizon District of Columbia, Verizon Maryland, Verizon
22 New Jersey, Verizon New York, Verizon Northwest, Verizon Texas, Virgin Mobile, Vonage,
23 Weblink Wireless, West Coast PCS LLC doing business as Sure West Wireless, Western
24 Wireless Corporation, XO Communications, and any and all other telephone service providers²

25 _____
26 communication." 18 U.S.C. § 3127(4).
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(including any Internet service provider or other electronic communications provider providing voice-over IP telephony [VoIP])³ (collectively, "the Telephone Service Providers"), to disclose or provide, upon oral or written demand by agents of the [insert agency name] (hereinafter the "Investigative Agency"),

a. For the Target Device, records or other information pertaining to subscribers or customers, including toll or call detail records⁴ [b7E] b7E for the sixty (60) days prior to the date the Order is filed by the Court⁵ (but not including the contents of communications).

b. Pursuant to 18 U.S.C. § 2703(c), after receipt and storage⁶, the following subscriber records and other information for all published, non-published, or unlisted dialing, routing, addressing, or signaling information captured by the pen register and trap and trace device on the Target Device:

- (i) name;
- (ii) address;
- (iii) local and long distance telephone connection records, or records of session times and durations with Target Device;

carrier, but the telephone number and subscriber information remain the same.

³ VoIP is essentially a type of hardware and/or software (provided, for example, by Qwest Communications, SBC Communications, Sprint-Nextel, and Verizon Wireless) that allows people to use the Internet as a transmission medium for telephone calls. In general, this means sending voice information in the form of digital packets of information rather than sending it through the traditional public switch telephone network.

⁴ [b7E]

⁵ As used herein, "the date the Order is filed by the Court" is the date indicated by the clerk's file stamp on the first page of the Order.

⁶ "After receipt and storage" is intended to ensure that the information authorized under paragraph 2b is information that is first captured and recorded by the provider before being sent to the Investigative Agency.

- (iv) length of service (including start date) and types of service utilized;
(v) telephone or instrument number or other subscriber number; and
identity, including any temporarily assigned network address; and

c. [

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B. CERTIFICATION PURSUANT TO 18 U.S.C. §§ 3122 AND 3123

3. 18 U.S.C. § 3122(b)(2) provides that a court may issue an order for a pen register or a trap or trace device when an attorney for the government certifies that "the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by (a law enforcement agency.)" In support of this Application, I state the following:

4. I am an "attorney for the Government" as defined in Rule 1(b)(1)(B) of the Federal Rules of Criminal Procedure, and therefore, pursuant to 18 U.S.C. § 3122, may apply for an order

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1 authorizing the installation and use of pen registers and trap and trace devices.

2 5. I certify that the information likely to be obtained from the pen register and trap and trace
3 device on the Target Device is relevant to an ongoing criminal investigation being conducted by
4 the Investigative Agency in connection with possible violations of federal criminal statutes,
5 including [insert code sections] by [list names of targets] and others.

6 6. Therefore, based upon the above Certification, and pursuant to 18 U.S.C. §§ 3122 and
7 3123, I request that the Court issue an order authorizing:

8 a. The Investigative Agency [to install, or cause the provider to install, and use,
9 [to continue to use] a pen register device to [b7E
10 b7E
11 b7E
12 b7E] for a period of sixty (60) days from
13 the date the order is filed by the Court.

14 b. The Investigative Agency [to install, or cause the provider to install,
15 and use,] [to continue to use] a trap and trace device on the Target Device to [b7E
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17 b7E
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19 b7E] for a period of sixty (60) days from the date the Order is filed by the
20 Court.

21 c. That, pursuant to 18 U.S.C. § 3123(b)(1)(c), the requested [installation
22 and use] [continued use] of a pen register and trap and trace device permit the use of each not

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This includes the same information described in footnote 11 above.

1 only on the Target Device[

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9 7. I further request, pursuant to 18 U.S.C. §§ 3123(a)(1) and 3123(b)(2), that the
10 Order direct that the furnishing of information, facilities, and technical assistance necessary to
11 accomplish the installation and operation of the pen register and trap and trace device by the
12 Target Device's Telephone Service Providers (including any Internet service provider or other
13 electronic communications provider providing VoIP), and any and all other telephone service
14 providers, persons, or entities providing wire or electronic communications service in the United
15 States whose assistance may facilitate the execution of the Order, occur unobtrusively and with a
16 minimum of interference with the services that are accorded the persons with respect to whom
17 the installation and use is to take place, with reasonable compensation to be paid by the
18 Investigative Agency for reasonable expenses directly incurred in providing such information,
19 facilities, and assistance.

20 8. I further request that the Order direct the Telephone Service Providers to furnish
21 the results of the pen register and trap and trace devices to agents of the Investigative Agency as
22 soon as practicable, twenty-four (24) hours a day for the duration of the order.

23 C. CERTIFICATION PURSUANT TO 18 U.S.C. § 2703

24 9. 18 U.S.C. § 2703(d) provides that a court may issue an order authorizing
25 disclosure of a record or other information pertaining to a telephone subscriber or customer (not
26 including the contents of communications) when a United States agency provides the Court with
27 "specific and articulable facts showing that there are reasonable grounds to believe that ... the
28 records or other information sought, are relevant and material to an ongoing criminal

1 investigation." 18 U.S.C. § 2703(d).

2 10. For the purposes of obtaining a court order for disclosure as described in 18
3 U.S.C. §§ 2703(c)(1)(B) and 2703(c)(2), and in order to satisfy the requirements of 18 U.S.C. §
4 2703(d), Applicant, based on discussions with agents of the Investigative Agency, hereby sets
5 forth the following specific and articulable facts that they have provided to me showing that there
6 are reasonable grounds to believe that the records and other information identifying subscribers
7 (but not including the contents of communications) for telephone numbers identified through the
8 pen register and trap and trace device on the Target Device, subscriber information associated
9 with any service changes regarding the Target Device, and the records or other information
10 pertaining to subscribers (but not including the contents of communications) for the Target
11 Device will be relevant and material to an ongoing criminal investigation:

12 [b7E]
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14 b7E
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16 []
17 11. Agents of the Investigative Agency have advised Applicant that, based upon their
18 training and experience, [b7E]
19 [] se
20 b7E
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23 S
24 [b7E]

25 12. Obtaining the information specified in paragraph 2b above is critical to accurately
26 identifying such subscribers because, among other things:

27 [a. b7E]
28

b.

c.

13. Agents believe, based on these facts and their training and experience, that the Target Device is currently being used to conduct criminal activities in violation of federal law. Pursuant to 18 U.S.C. §§ 2703(c)(1)(B), 2703(d), 3122, and 3123, there are reasonable grounds to believe that the specific and articulable facts, discussed above, show that the records and information sought are relevant and material to an ongoing criminal investigation.

14. I therefore request that the Court issue an Order requiring that the Target Device's Telephone Service Providers disclose, or provide upon oral or written request by agents of the Investigative Agency, the information set forth above in paragraph 2.

15. The undersigned represents, upon information and belief, the Target Device [has/has not] been the subject of prior order[s] entered by this Court on _____.

D. REQUEST FOR NON-DISCLOSURE AND SEALING

16. Based upon the information provided in this Application, I believe that disclosure of the requested Order may result in flight from potential prosecution or the destruction of, or tampering with evidence, or may otherwise seriously jeopardize the investigation. Moreover, the exact nature of the government's pen register device and its configuration is classified as a law enforcement sensitive investigative technique, the disclosure of which would likely jeopardize other ongoing investigations and/or future use of the technique. Therefore, pursuant to 18 U.S.C. §§ 2705(b) and 3123(d), I request that this Application and Order be sealed, that the identity of any targets of the investigation and the possible violations thereof may be redacted from any copy of the Order served on any telephone service provider or

1 other person, and that the Court direct the Telephone Service Providers and any other Telephone
2 Service Provider which provides service to a telephone number that either places telephone calls
3 to, or receives telephone calls from, the Target Device, not to disclose in any manner, directly or
4 indirectly, by any action or inaction, the existence of the Order, in full or redacted form,
5 regarding the pen register or trap and trace devices, or of this investigation, to the listed
6 subscriber(s) for the Target Device, the occupants of said premises, the subscribers of the
7 incoming calls to or outgoing calls from the Target Device, or to any other person until otherwise
8 ordered by this Court.

9 I declare under penalty of perjury that the foregoing factual assertions are true and correct
10 to the best of my knowledge and belief.

11 Dated: _____

Respectfully submitted,

12 SCOTT N. SCHOOLS
13 United States Attorney

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15 Assistant United States Attorney
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1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION
4

5 IN RE TELEPHONE
6 INFORMATION NEEDED FOR A
7 CRIMINAL INVESTIGATION

No.

SEALED ORDER

8 Before this Court is an Application under 18 U.S.C. §§ 2703(c), 2703(d), 3122, and 3123,
9 by [Name of AUSA], an attorney for the Government as defined by Fed. R. Crim. P. 1(b)(1)(B),
10 requesting an Order authorizing the [installation and] [continued] of a pen register and trap and
11 trace device on the instrument or facility currently utilizing the following subject telephone
12 number, (hereinafter, the "Target Device"):

13 Telephone number:
14 Service provider:
15 Subscriber:
16 Address:

17 Upon review of the Application, the Court hereby FINDS that:

18 Pursuant to 18 U.S.C. § 3123, Applicant has certified that the information likely to be
19 obtained by such use is relevant to an ongoing criminal investigation being conducted by the
20 [insert name of agency] (hereinafter the "Investigative Agency") in connection with possible
21 violations of [insert code section] by [list names of targets], and others.

22 Pursuant to 18 U.S.C. §§ 2703(c)(1)(B) and 2703(d), Applicant has offered specific and
23 articulable facts showing that there are reasonable grounds to believe that records or other
24 information identifying subscribers or customers (not including the contents of communications)
25 for telephone numbers identified through the pen register and trap and trace devices on the Target
26 Device, changes in service regarding the Target Device, cell site information¹ regarding the

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28
SEALED ORDER

1 Target Device, and records or other information pertaining to subscriber(s) or customer(s) (but
2 not including the contents of communications) for the Target Device are relevant and material to
3 an ongoing criminal investigation of the specified offenses.

4 THEREFORE, IT IS HEREBY ORDERED, pursuant to 18 U.S.C. § 3123, that agents of
5 the Investigative Agency may [install, or cause to be installed, and] [continue to] to use a pen
6 register to [b7E
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9 b7E] for a period of sixty (60) days from the date this Order
10 is filed by the Court,³ provided, however, that such information shall not include the contents of
11 any communication;

12 IT IS FURTHER ORDERED, pursuant to 18 U.S.C. § 3123, that agents of the
13 Investigative Agency may [install, or cause to be installed, and] [continue to] use a trap and
14 trace device on the Target Device to [b7E
15 b7E
16 b7E
17 b7E ation of calls created by such incoming impulses] for a period of
18 sixty (60) days from the date this Order is filed by the Court, provided, however, that such
19 information shall not include the contents of any communication;

20 [b7E]

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24 b7E
25 b7E
26 3 As used herein, "the date this Order is filed by the Court" is the date indicated by
27 the clerk's file stamp on the first page of the Order.

28 4 This includes the same information described in footnote 2 above.

1 IT IS FURTHER ORDERED that the Investigative Agency is not authorized to obtain
2 from the telephone Service Providers: (1) [b7E

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8 IT IS FURTHER ORDERED, pursuant to 18 U.S.C. §§ 2703(c)(1)(B), 2703(c)(2),
9 2703(d), 3122, and 3123 that Adelphia Communications, Adelphia Long Distance, Allegiance
10 Telecom of California, Inc., Astound, AT&T California, AT&T Local Service, AT&T Long
11 Distance, AT&T Midwest, AT&T Nevada, AT&T Southwest, Bell South Telecommunications,
12 Broadwing Communications, Celco Partnership doing business as Verizon Wireless, Cellular
13 One, Central Wireless Partnership doing business as Sprint PCS, Cingular Wireless, Comcast,
14 Cox Communications, Dobson Cellular, Dobson Communications, Edge Wireless LLC, Electric
15 Lightwave Inc., Embarq, Ernest Communications, Evans Telephone Company, Frontier: A
16 Citizens Communications Company, Genesis Communications International, ICG
17 Communications, ICG Telecom Group, Locus Communications, Metrocall, Metro PCS,
18 Mpower, Nationwide Paging, Navigator Telecommunications LLC, Network Services LLC,
19 Nextel Communications, NII Communications, Pac West Telecomm Incorporated, Qwest
20 Communications, RCN Communications, Roseville Telephone Company, Skype, Sprint-Nextel,
21 TelePacific Communications, Teligent, Time-Warner Telecom, T-Mobile USA Inc., TracFone

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1 Wireless, USA Mobility, US Cellular, US TelePacific Corp. doing business as TelePacific
2 Communications, Verizon California, Verizon District of Columbia, Verizon Maryland, Verizon
3 New Jersey, Verizon New York, Verizon Northwest, Verizon Texas, Virgin Mobile, Vonage,
4 Weblink Wireless, West Coast PCS LLC doing business as Sure West Wireless, Western
5 Wireless Corporation, XO Communications, and any and all other telephone service providers
6 (including any Internet service provider or other electronic communications provider providing
7 voice-over IP telephony [VoIP]) (collectively, "the Telephone Service Providers"), and any and
8 all other persons or entities providing wire or electronic communications service in the United
9 States whose assistance may facilitate the execution of this Order, shall disclose or provide, upon
10 oral or written demand by agents of the Investigative Agency:

11 1. For the Target Device, records or other information pertaining to subscriber(s) or
12 customer(s), including cellsite information and [b1E]
13 [b1E] for the sixty (60) days prior to the date this Order is filed by the Court (but
14 not including the contents of communications);

15 2. For the Target Device, after receipt and storage,⁷ records or other information
16 pertaining to subscriber(s) or customer(s), including (1) the means and source of payment for the
17 service and (2) cellsite information, provided to the United States for (a) the origination of a call
18 from the Target Device or the answer of a call to the Target Device and (b) the termination of the
19 call (but not including the contents of the communications);

20 3. Pursuant to 18 U.S.C. § 2703(c), after receipt and storage, the following
21 subscriber records and other information for all published, non-published, or unlisted dialing,
22 routing, addressing, or signaling information captured by the pen register and trap and trace
23 device on the Target Device:

- 24 (i) name;
25 (ii) address;
26 (iii) local and long distance telephone connection records, or records of session
times and durations with Target Device;
27 (iv) length of service (including start date) and types of service utilized; and

28 ⁷ "After receipt and storage" is intended to ensure that the information authorized
under paragraphs 2 and 3 is information that is first captured and recorded by the provider before
being sent to the Investigative Agency.

(v) telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and

4. [b7E

IT IS FURTHER ORDERED that this authorization for the [installation and] [continued] use of a pen register and trap and trace device applies not only to the Target Device,

IT IS FURTHER ORDERED, pursuant to 18 U.S.C. §§ 3123(a)(1) and § 3123 (b)(2), that, upon service of this Order, the Target Device's Telephone Service Providers shall furnish agents of the Investigative Agency with all information, facilities, and technical assistance necessary to accomplish the installation and use of the pen register and trap and trace devices, unobtrusively and with minimum interference with the services that are accorded the persons with respect to whom the installation and use is to take place.

IT IS FURTHER ORDERED that the Target Device's Telephone Service Providers shall furnish the results of the pen register and trap and trace devices to agents of the Investigative Agency as soon as practicable, twenty four (24) hours a day for the duration of the Order.

IT IS FURTHER ORDERED that the Target Device's Telephone Service Providers be reasonably compensated by the Investigative Agency for reasonable expenses directly incurred in

1 providing information, facilities, and assistance.

2 Good cause having been shown, IT IS FURTHER ORDERED, pursuant to 18 U.S.C. §§
3 2705(b) and 3123(d), that this Order and the Application be SEALED until otherwise ordered by
4 the Court, that the identity of any targets of the investigation and the possible violations thereof
5 may be redacted from any copy of the Order served on any service provider or other person, and
6 that the Target Device's Telephone Service Providers and any other Telephone Service Provider
7 which provides service to a telephone number that either places telephone calls to, or receives
8 telephone calls from, the Target Device, shall not disclose in any manner, directly or indirectly,
9 by any action or inaction, the existence of this Order, in full or redacted form, of the pen register
10 or trap and trace devices, or of this investigation, to the listed subscribers for the Target Device,
11 or to any other person unless otherwise ordered by this Court.

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13 _____
14 DATE

UNITED STATES MAGISTRATE JUDGE