

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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U.S. DISTRICT COURT

IN RE APPLICATION OF THE  
UNITED STATES OF AMERICA FOR  
AN ORDER PURSUANT TO  
18 U.S.C. § 2703(d).

No. 2:17-mc-51662  
Hon. Robert H. Cleland  
Magistrate Judge R. Steven Whalen

**OPINION AND ORDER DENYING WITHOUT PREJUDICE  
APPLICATION FOR ORDER UNDER 18 U.S.C. § 2703(d)**

The government seeks an order, pursuant to the Stored Communications Act (“SCA”), 18 U.S.C. §§ 2703(c)(1) and (d), that certain cellular telephone service providers disclose records pertaining to six specific cell towers, on specific dates and at specific times. The government seeks the disclosure records that identify:

- A. the telephone call number and unique identifiers *for each wireless device in the vicinity of the tower* (“the locally served wireless device”) that registered with the tower, including Electronic Serial Numbers (“ESN”), Mobile Electronic Identity Numbers (“MEIN”), Mobile Identification Numbers (“MIN”), Subscriber Identity Modules (“SIM”), Mobile Subscriber Integrated Services Digital Network Numbers (“MSISDN”), International Mobile Subscriber Identifiers (“IMSI”), and International Mobile Equipment Identities (“IMEI”);
- B. the source and destination telephone numbers associated with each communication (including the number of the locally served wireless device and the number of the telephone that called, or was called by the locally served wireless device);
- C. the date, time, and duration of each communication;
- D. the ‘sectors’ (i.e., the faces of the towers) that received a radio signal from each locally served wireless device; and

E. the type of communication transmitted through the tower (such as phone call or text message). (Emphasis added).

The information the government seeks, sometimes referred to as a “cell tower dump,” involves an investigative technique that the Court in *In re Application of the U.S.A. for an Order Pursuant to 18 U.S.C. §§ 2703(c) and 2703(d)*, 45 F.Supp.3d 511, 512 (S.D.N.Y. 2014), described as follows:

“The information gathered here—specifically, the telephone numbers that connected to the cell towers during the pertinent time period—will be compared to similar information gathered from other locations relevant to the investigation to determine numbers that were used at multiple locations, as well as numbers that match those that law enforcement has learned are associated with certain persons under investigation of the series of crimes at issue.”

In this Southern District of New York case, the Court held that (1) the information sought was not protected by the Fourth Amendment, and (2) the text of the SCA, 18 U.S.C. § 2703(c), providing for disclosure of “a record or other information pertaining to a subscriber or customer of such service,” while phrased in the singular, does not preclude disclosure of large batches of information such as are sought in this case. *See also United States v. Pembroke*, 119 F.Supp.3d 577 (E.D. Mich. 2015), *aff’d* \_\_F.3d\_\_, 2017 WL 5905618 (6<sup>th</sup> Cir. 2017). Moreover, while the Supreme Court has granted certiorari and heard argument to consider the applicability of the Fourth Amendment warrant requirement to information sought under the SCA, *United States v. Carpenter*, 819 F.3d 880 (6<sup>th</sup> Cir. 2016), *cert. gtd. Carpenter v. United States*, 137 S.Ct. 2211 (June 5, 2017), at present the law of this Circuit is that information sought under § 2703(d) does not require

a showing of probable cause.

Thus, until the Supreme Court holds otherwise, I accept that the information the government seeks in this application may be produced under the SCA. However, there remains a concern that in a cell tower dump, the government will also acquire a large amount of data about innocent third parties who have no connection to the matter under investigation. Recognizing this concern, the Southern District of New York in *Application for Order*, 45 F.Supp.3d at 519, required the government to submit an amended application that “outlines a protocol to address how the Government will handle the private information of innocent third-parties whose data is retrieved.” *See also Application of the United States of America for an Order Pursuant to 18 U.S.C. § 2703(d) Directing Providers to Provide Historical Cell Site Locations Records*, 930 F.Supp.2d 698, 702 (S.D. Tex 2012)(“[I]n order to receive such data, the Government at a minimum should have a protocol to address how to handle this sensitive private information); *see also In the Matters of the Search of Cellular Telephone Towers*, 945 F.Supp.2d 769, 771 (S.D. Tex. 2013)(including a requirement in a cell site order that “any and all original records and copies...determined not to be relevant to the...investigation” be returned to the cell service providers).

I agree with that any order for mass production of cell site data requires protections for third parties who are not subjects of the investigation. Therefore, consistent with the Southern District of New York’s order, the present application is DENIED WITHOUT

PREJUDICE.

The government may resubmit an application and proposed order consistent with this Opinion and Order.

This Opinion and Order will be sealed until further order of the Court.

IT IS SO ORDERED.

s/R. Steven Whalen  
R. STEVEN WHALEN  
UNITED STATES MAGISTRATE JUDGE

Date: December 12, 2017