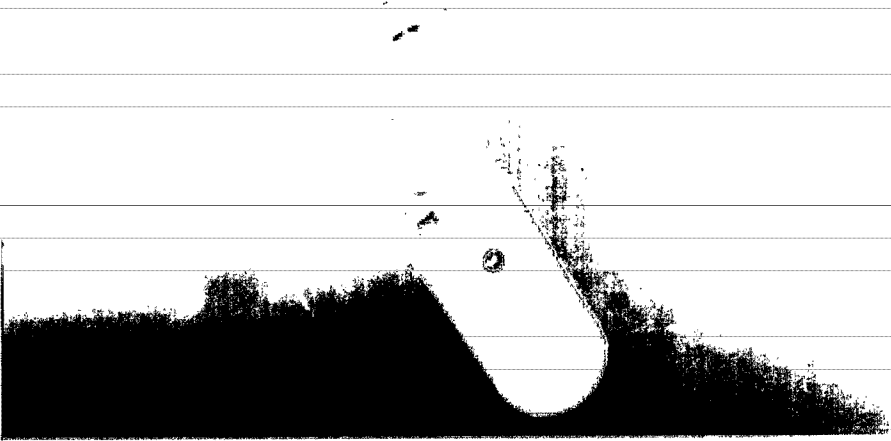


CELL QTD 008202



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Cellular Tracking Legal Issues

June 7, 2006

Overview

- DOJ's Policy on Cellsite Simulators: **Pen Register Device** (18 U.S.C. § 3127(3))

- **LIABILITY RISKS & Best Practices**

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- [Redacted]

- **Emergency Pen Register Authority**

- Federal v. State Orders
 - Voluntary Disclosures

- **Loan of ELSUR Policy**

- **Liability**

- **Protecting Sensitive Techniques**

- Use as evidence

CELL/OTD 006203

[REDACTED]

New DOJ Opinion:

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DOJ/CCIPS: Pen/Trap order [REDACTED]

[REDACTED] a

Pen Register Device) to obtain any “signaling information” transmitted from a cellular telephone to:

- 1) Identify a target phone or
- 2) Locate a phone

DOJ: “signaling information” is any non-content information “transmitted by” a telephone instrument

CELL/OTD 008206

Pen Register—
BEST PRACTICES

BEST PRACTICES:

Use PR/TT order to authorize use of

- authorize installation & use

- Advise of potential

- Not retain records beyond use to locate target phone?

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CELL/DTD 008209

[REDACTED] at is Cell site location data

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- is generated by the network for network purposes regardless of a LE order.
- is necessary to Provision of Service & a call cannot be processed without it.
- exists in the network as a **RECORD** prior to its being obtained by LE.
- has no relationship to the content of a communication.
- is delivered to LE under CALEA only at the beginning and end of calls.

412800 01077E3

Cellsite Court Decisions

- CALEA prohibits collecting location information "solely pursuant" to a PR/TT
- 18 USC 2703(d) (stored communication act)

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[Redacted]

■ [Redacted]

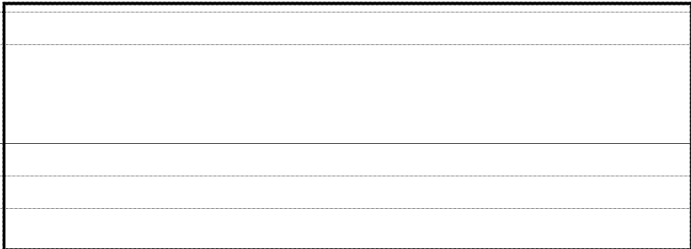
812800 010/1130

CALEA Delivery of location data

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- **Near Real-Time**: CALEA requires carriers to “expeditiously isolates”
 - “call-identifying information”: includes cell site information utilized in processing calls
 - for government access "before, during, or immediately after the transmission of a [] communication" (i.e., in real-time or near real-time)
- **CALEA Standard**: location information is delivered after generation of data by the carrier’s network and use in the provision of service (e.g., call origination, Answer, call release)

CELL/OTD 008219



Guidance

- [Redacted]

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CEL/OTD 000222

- **AND Use a PR/TT order for** [Redacted]

[Redacted]

[Redacted]

- Advise of [Redacted]

[Redacted]

- Not retain records

[Redacted]

Alternative authority

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Consent (18 USC 3121(b)(3))

[Redacted]

[Redacted]

Voluntary Disclosure by Provider under 18 USC 2702(c)(4) : if provider “reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person justifies the disclosure of” “a record or other information pertaining to a subscriber or customer of such service.”

CELL/OTD 008223

Emergency Provision

§ 3125(a)(1)

– DOJ command Center [redacted] or OEO (business hours)

- Emergencies involving:

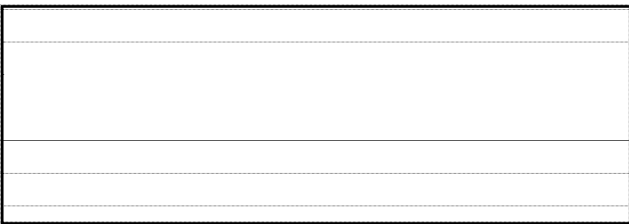
- Immediate danger of death or serious injury

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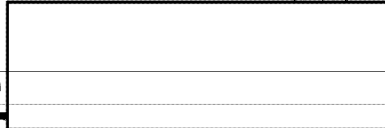
[redacted]

- MIOG, Part 2, 10-10.7.1

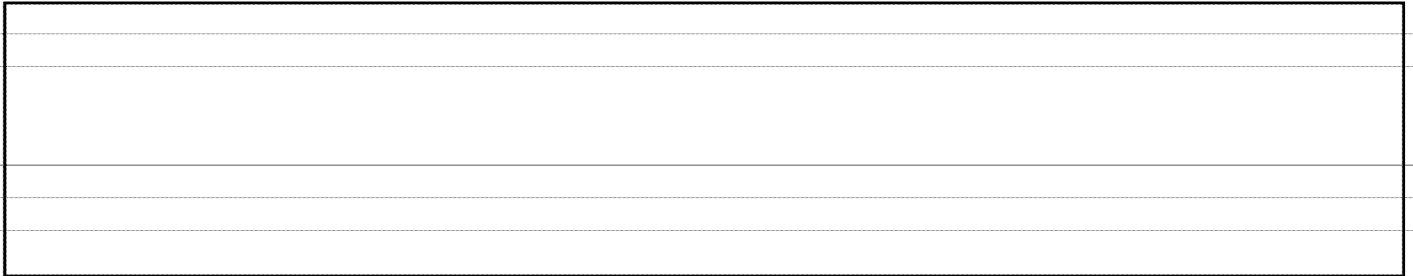
CELL/OTD 008224



Purge

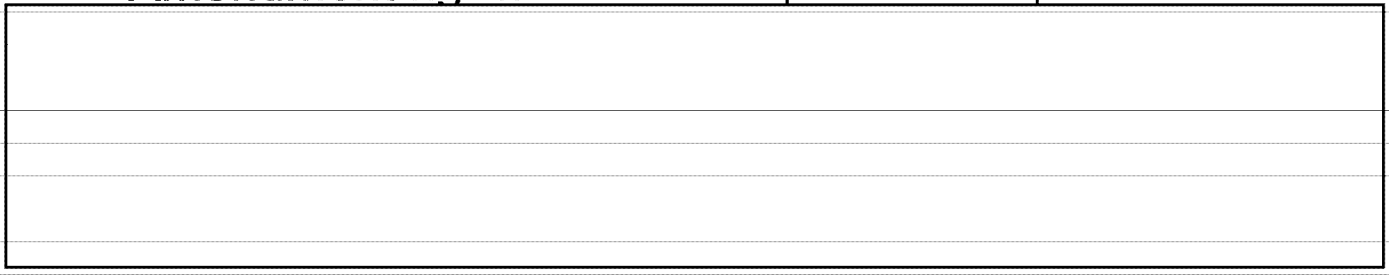


Data



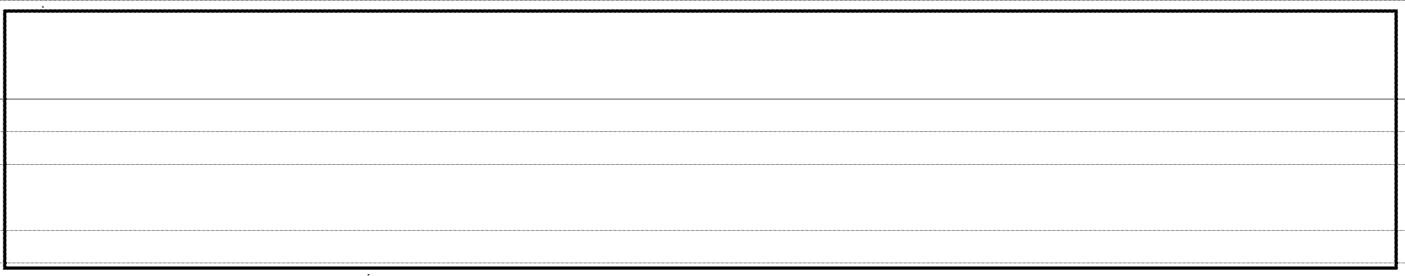
Amendment rights & Minimize

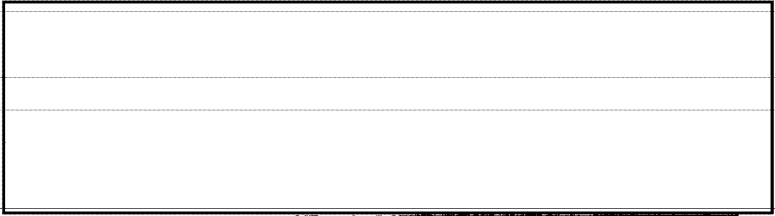
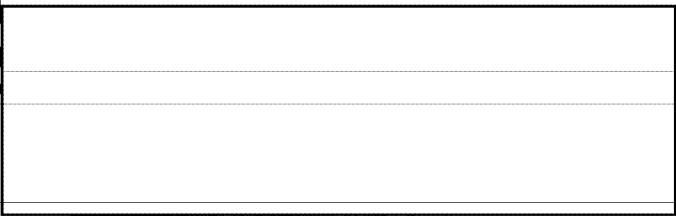
data



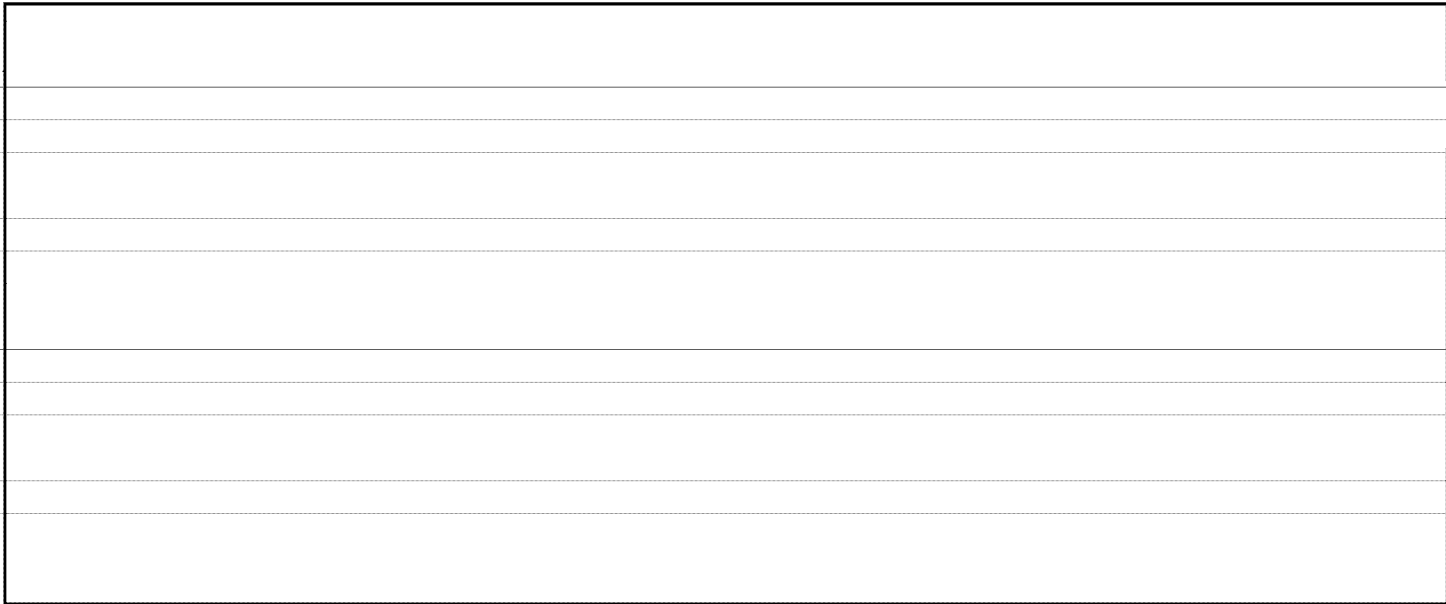
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CELL/OTD 008226





- Maintaining/Purging “Pen” data?



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CELL/OTD 008227

[Redacted]

[Redacted]

[Redacted]

[Redacted]

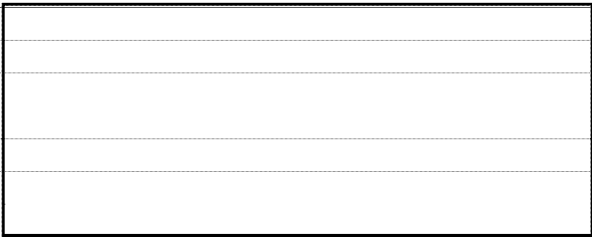
[Redacted]

Therefore, pursuant to 18 U.S.C. § 3123(d), I request that this application and order be sealed until otherwise ordered by this court; and

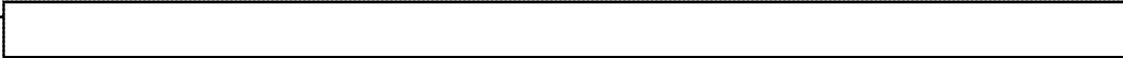
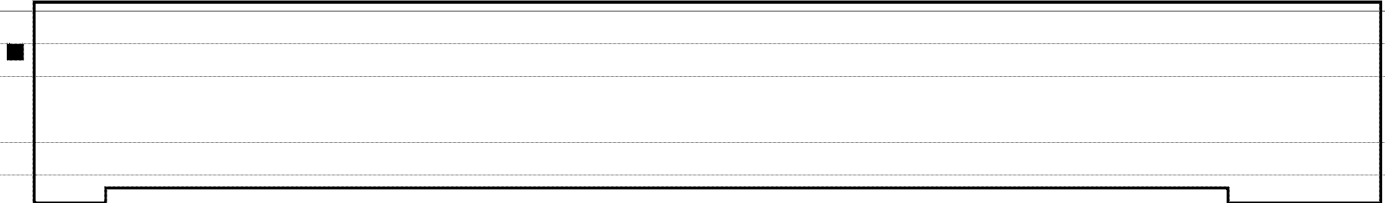
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CELL/OTD 008228



4th Amendment Privacy Interest

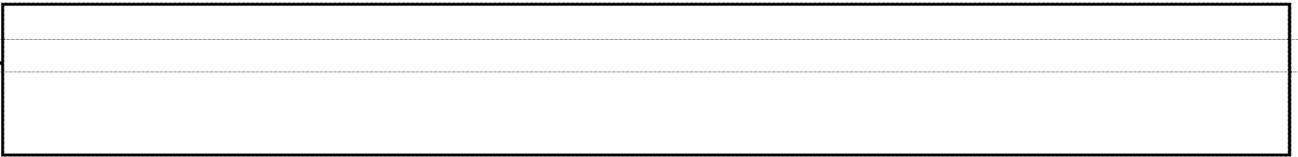


Smith v.

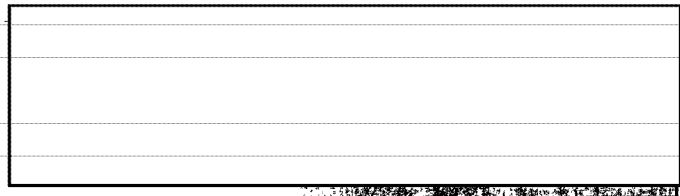
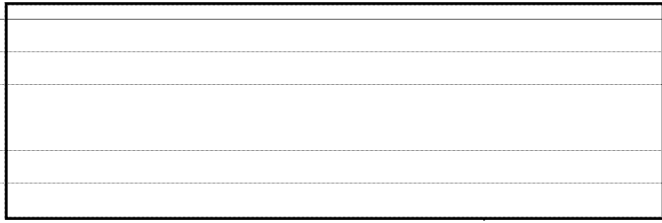
Maryland, 442 U.S. 435, 744 (1979).

- no legitimate expectation of privacy in information knowingly conveyed to a third party
- In re Digital Analyzer found “[n]o logical distinction between telephone numbers called and a party’s own telephone number (or ESN number), all of which are regularly voluntarily exposed and known to others. 885 F. Supp. at 199 (citing Smith v. Maryland, 442 U.S. 735, 742-45 (1979)).

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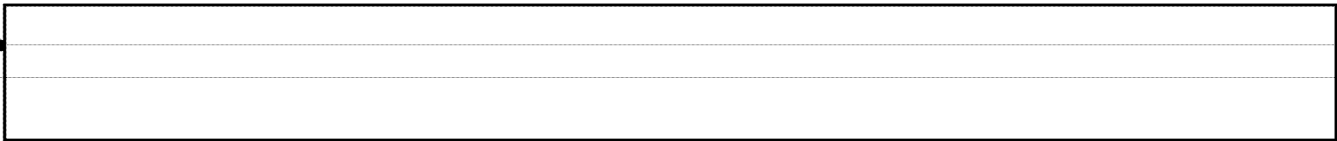


CELL/OTD 008229



- **Qualified Government Privilege in Non-disclosure based on Roviaro v. United States, 353 U.S. 53 (1957):** disclosure of identity (and testimony) of informant.
 - Generally technique, type of device, location of install, etc. is protected
 - unless Defense can establish disclosure is necessary to defense, i.e., no other/adequate means to cross-examine/test evidence; if so:
 - then Balancing of interests

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- see also Jayme S. Walker "The qualified privilege to protect sensitive investigative techniques from disclosure," LEB Vol 69 NO.5 at 26 (May 2000).



CELL/OTD 008233

CELL/OTD 008

Qualified Privilege

- **Compare, United States v. Van Horn**, 789 F.2d 1492 (11th Cir.), cert. denied, 479 U.S. 854 (1986) (concealed microphone in office, defendant sought information about location of device claiming necessary to demonstrate that voices on tape could have been distorted by way mic was hidden and the distortion led to misidentification of the voice), recognized a qualified government privilege not to disclose sensitive investigative techniques.

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- **With United States v. Foster**, 986 F.2d 541, 543 (D.C. Cir. 1993) (defendant sought location of observation post: officer's observation of drug transaction was key evidence implicating defendant; surveillance not taped or photographed, so no alternative evidence for jury to examine to determine whether surveillance post provided clear view from which officer could make accurate identification of defendant).

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Qualified Privilege (cont).

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- **U.S. v. Garey, 2004 WL 2663023 (M.D.Ga. Nov. 15, 2004)**
 - Defendant sought nature & details of pen register used to determine the geographical location of a cellular phone
 - Court found the information protected by qualified investigative techniques privilege & national security privilege
 - Balanced government's interest in maintaining privilege with Defendant's need for the information
- Defendant had the **Product of the Surveillance**: the cellphone used in making threatening calls was found in defendant's house during search of residence;
 - Defendant did not need to know how the technology traced the geographic location of the phone.
 - locating the phone in the residence confirmed the accuracy of the geographic surveillance;
- Moreover, Defendant could challenge the technology used to establish that phone found in residence was the one that actually made the criminal calls.



Contact Info:



ASSISTANT GENERAL COUNSEL,

Science & Technology Law Unit,

Office of the General Counsel

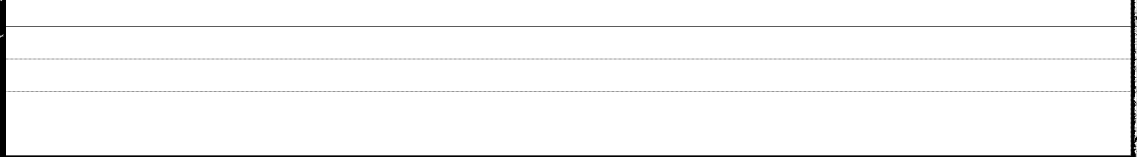
•DOJ (CCIPS): www.cybercrime.gov

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CELL/OTD 008239



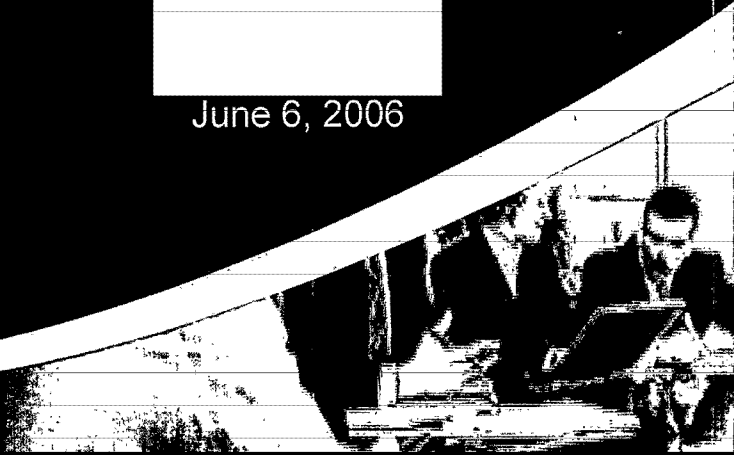
2006 Annual Conference



June 6, 2006

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CELL/OTD 008240



RESOURCE

- [Redacted]
- - Recent Orders, commentary, and guidance regarding law enforcement's ability to obtain the

[Redacted]

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CELL/OTD 0002/2



Court ISSUES:

1. CALEA prohibits collecting location information "solely pursuant" to a PR/TT
2. 18 USC 2703(d) (stored communications act)

CELL 010 008244

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What is Cell site location data

- is generated by the network for network purposes regardless of a LE order.
- is necessary to Provision of Service & a call cannot be processed without it.
- exists in the network as a RECORD prior to its being obtained by LE.
- has no relationship to the content of a communication.
- is delivered to LE under CALEA only at the beginning and end of calls.

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Carrier's use Location Data in Provision of Service

2 primary forms of location information are supported by wireless networks for various reasons:

1. Serving System: Information regarding the serving system/provider.
2. Tower/Sector information associated with the cell site tower supporting service to the user



Cell Site Data from Provider Pursuant to CALEA STD

- CALEA: technical standard for location parameters (J-STD-025)
(http://www.tiaonline.org/standards/search_results2.cfm?document_no=J-STD-025-A www.tiaonline.org)
 - Origination (of an outgoing call from target phone)
 - Answer (at answer of a call terminating to the target phone)
 - Release (at the end of the call for both incoming and outgoing calls)

CELL/OTD 008249



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CALEA Delivery of location data

- **Near Real-Time**: CALEA requires carriers to “expeditiously isolates”
 - “call-identifying information”: includes cell site information utilized in processing calls
 - for government access “before, during, or immediately after the transmission of a [] communication” (i.e., in real-time or near real-time)
- CALEA Standard: location information is delivered after generation of data by the carrier’s network and use in the provision of service (e.g., call origination, Answer, call release)



Legislative Initiative

- DOJ/CCIPS: amend 2703 to ADD new (h)

[Redacted content]

[Redacted content]

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CELL/OTD 008260



Guidance (cont.)

Use PR/TT order for use [redacted]

- authorize installation & use [redacted]
- Advise of potentia [redacted]

- Not retain records beyond use to locate target phone?

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CELL/OTD 008262



Emergency Provision

18 U.S.C. § 3125(a)(1)

[Redacted]

DOJ command Center [Redacted] or OEO (business hours) [Redacted]

- Emergencies involving:
 - Immediate danger of death or serious injury

[Redacted]

[Redacted]

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CELL/010 008268



Alternative authority

Consent (18 USC 3121(b)(3) PR/TT) [REDACTED]

Voluntary Disclosure by Provider under 18 USC 2702(c)(4)
: if provider “reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person justifies the disclosure of” “a record or other information pertaining to a subscriber or customer of such service.”

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Office of the General Counsel

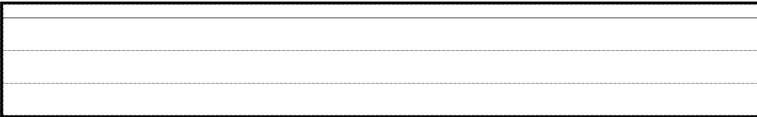
• DOJ (CCIPS): www.cybercrime.gov



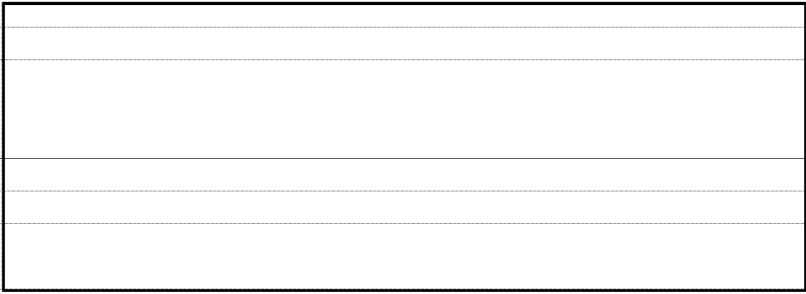
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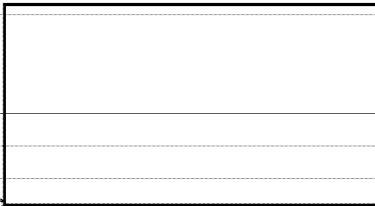


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CELL 010 008943



Overview

August 29, 2006

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