

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**IN THE MATTER OF THE)
APPLICATION OF THE UNITED) Magistrate's No. 07-524M
STATES OF AMERICA FOR AN ORDER)
DIRECTING A PROVIDER OF)
ELECTRONIC COMMUNICATION)
SERVICE TO DISCLOSE RECORDS TO)
THE GOVERNMENT)**

MEMORANDUM ORDER

Pending before the Court is the OBJECTIONS AND NOTICE OF APPEAL PURSUANT TO FED. R. CRIM. P. 59(a) AND 28 U.S.C. § 636(b)(1)(A) filed by the government (Document No. 4), with a memorandum of law in support of request for review (Document No. 11) and supplement (Document No. 21). The government appeals the OPINION AND MEMORANDUM ORDER filed by Magistrate Judge Lisa Pupo Lenihan on February 22, 2008.¹ In summary, the extensive and detailed Opinion and Memorandum Order denied an ex parte application filed by the government pursuant to the Stored Wire and Electronic Communications and Transactional Records Access Act, 18 U.S.C. § 2703, which sought provider disclosure of certain cellular telephone (“cell phone”) subscriber information without a showing of probable cause pursuant to the Fourth Amendment to the United States Constitution.

In recognition of the important and complex matters presented in this case and the lack of binding precedent from the United States Court of Appeals for the Third Circuit, the Court has received and considered memoranda of law submitted by the following amici curiae: BRIEF OF AMICUS CURIAE SUSAN FREIWALD IN FAVOR OF AFFIRMANCE (Document No. 27),

¹ The Opinion was also signed by Chief United States Magistrate Judge Susan Paradise Baxter and Magistrate Judges Amy Reynolds Hay, Francis X. Caiazza and Robert C. Mitchell.

BRIEF OF AMICI CURIAE THE ELECTRONIC FRONTIER FOUNDATION, THE AMERICAN CIVIL LIBERTIES UNION, THE ACLU-FOUNDATION OF PENNSYLVANIA, INC., AND THE CENTER FOR DEMOCRACY AND TECHNOLOGY IN OPPOSITION TO THE GOVERNMENT'S REQUEST FOR REVIEW (Document No. 28), and BRIEF OF AMICUS CURIAE FEDERAL PUBLIC DEFENDER (Document No. 29). The government has also filed a reply memorandum of law in response to the arguments presented by the amici curiae (Document No. 30). The appeal is ripe for disposition.

After in-depth consideration of the foregoing, the Court finds that the OPINION AND MEMORANDUM ORDER filed by Magistrate Judge Lisa Pupo Lenihan on February 22, 2008 is not clearly erroneous or contrary to law and therefore the OBJECTIONS AND NOTICE OF APPEAL PURSUANT TO FED. R. CRIM. P. 59(a) AND 28 U.S.C. § 636(b)(1)(A) filed by the government (Document No. 4) are **DENIED** and said OPINION AND MEMORANDUM ORDER is **AFFIRMED**.

The clerk shall docket this case closed.

SO ORDERED this 10th day of September, 2008.

BY THE COURT:

/s Terrence F. McVerry
United States District Court Judge

cc: Magistrate Judge Lisa Pupo Lenihan

Soo C. Song, AUSA

soo.song@usdoj.gov

Luke E. Dembosky, AUSA

luke.dembosky@usdoj.gov

Amici Curiae:

Lisa B. Freeland, FPD

lisa_freeland@fd.org

Professor Susan A. Freiwald

freiwald@usfca.edu

Jennifer S. Granick

Electronic Frontier Foundation

Jennifer@eff.org