

2009 HOUSE JUDICIARY

HB 1416

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1416

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 2/3/09

Recorder Job Number: 8345

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on HB 1416.

Rep. Dahl: I will let the AG's office take care of this bill.

Jonathan Byers, Asst. Attorney General, AG's office: Support (attachment). Explained the bill.

Rep. Delmore: Are there any instances where someone may not want to share the warrant information. I understand what you're doing, but there may be instances where someone may not want people to know that there is a warrant.

Jonathan Byers: As opposed to a search warrant, an arrest warrant is basically a directive from the Judge to go and arrest them. Since that is a directive from the Judge to do that, I can't imagine why that would need to be confidential. Now, it doesn't say that they have to do it on the spur of the moment, when they receive the warrant, so if they feel there is some danger and doesn't want it to get out to the person before they have the chance to go and arrest him, they can do that. Go arrest the person and then there would be no need to enter the warrant into the system, because they already have the person. It doesn't say within a certain number of hours you have to put this into the system.

Rep. Delmore: Conspiracy to commit crime, can you give me an example.

Jonathan Byers: One of the circumstances that I can think of would be the child pornography rings, where a number of people exchange child pornography. Another one would be the human trafficking, which is a serious problem.

Rep. Delmore: Who is on the sexual offender risk assessment committee.

Jonathan Byers: The nine entities that are appointed by the Attorney General. Two are law enforcement positions (1 from Minot and 1 from Fargo or Bismarck); the AG has one of the 9 positions and I'm the chairman of the committee; the 4th position is filled by a psychologist; the 5th position is filled by a citizen representative and currently that's a licensed clinical counselor; the 6th position is filled by the Parole & Probation officers; the 7th position is filled by a representative from the Division of Juvenile Services; and the 8th and 9th positions are filled by two victim witness coordinators that trade out.

Rep. Griffin: The amendment that I passed to bill 1334, would have added the language in subsection 3a and 3b. Were any amendments needed in 3c.

Jonathan Byers: Subsection 3c is retroactive, could put it in but it's not necessary.

Rep. Koppelman: There isn't a fiscal note, is it not going to cost anything to do this database and all the warrants you are talking about.

Jonathan Byers: Entry of the warrants, of course, would be by the issuing entity, just as they do now. There is probably something within the parameters of their job already, the database is already established, so there isn't anything to create. There will be a little additional work by our IT staff to make sure that QUIZ can dump it into the NCIC but we haven't asked for any additional funding to do that.

Rep. Koppelman: This warrant database, can you elaborate on what the purpose of that is, or how it helps.

Jonathan Byers: When law enforcement does a traffic stop, they call into the State Radio, they are already getting a check on the NCIC record to check whether this is also a registered sex offender or not. Basically, on the spot, they can call in and get an idea of who they are dealing with is the primary reason for having an electronic database.

Rep. Koppelman: In other words, the addition of the warrant information would be part of that snapshot that they get when they pull someone over, is that correct.

Jonathan Byers: Yes. It provides a snapshot, and as far as locating and tracking all criminals, and not just sex offenders, having a warrant that can be accessed by the law enforcement official that comes into contact with the person out in the world is the one way that you most likely will find missing offenders or people that do have warrants.

Rep. Griffin: On section 1, currently this would provide that any type of investigation done by the Bureau would be in there. Can you explain it, if it were in-state what is the current process.

Jonathan Byers: If it were an in-state, I will continue to recommend to the AG that we act on and go ahead and use the regular search warrant process. The reason is that it's clear with the search warrant process that they've gotten a probable cause determination by a local magistrate, and so in looking for records here, we're going to ask law enforcement to still use that process of getting a search warrant. But if it is in another state, we've written what looks like fairly broad strokes to cover all NCIC investigations. The reason I wrote it that way is because when you're thinking of an internet service provider records, or cell phone records, I don't want there to be some other source out there that we're not currently contemplating, that would also be necessary for the child pornography investigation. I do want to clarify that the AG has used this power very scarcely; I think within the last two years he has only used it a handful of times that we issued an administrative subpoena, so it's not something that we're saying come one come all, law enforcement let's use this for everything, but in those limited

cases where we don't have any other way to get the record to a court in the other state. This allows us to identify the person to the subscriber who has the records and then when it comes to a trial, we would have a subpoena on the court case to bring that representative from the internet service provider to testify so this is really to identify who it is that we should be investigating and later on there can be a subpoena issued on the criminal court case itself.

Chairman DeKrey: Thank you. Further testimony in support of HB 1416.

Tim Erickson, Bureau of Criminal Investigation Internet Crimes Against Children Task Force: Support (attachment).

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition. We will close the hearing.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1416

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 2/16/09

Recorder Job Number: 9531

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will take a look at HB 1416.

Rep. Griffin: Explained the amendment.

Rep. Klemin: I had in my notes that there was a question about whether there should be another amendment on here, on page 4, line 23. If you go back up to line 18, it says has been adjudicated for or found guilty and that was supposed to take care of juveniles. Then the question on my notes was whether that same language should be on line 23.

Rep. Griffin: That question was asked of Jonathan Byers and he said since it was in the proposed amendments that I had for the other bill (1334), he said it wasn't needed. I move the AG's amendments.

Rep. Delmore: Second.

Chairman DeKrey: Voice vote, motion carried. We now have the bill before us as amended. What are the committee's wishes.

Rep. Delmore: I move a Do Pass as amended.

Rep. Wolf: Second.

12 YES 0 NO 1 ABSENT

DO PASS AS AMENDED

CARRIER: Rep. Griffin

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1416

Page 1, line 1, remove "a new subsection to"

Page 1, line 2, replace "12-60-16.2" with "29-05-11.1"

Page 1, line 14, replace "A new subsection to section 12-60-16.2" with "Section 29-05-11.1"

Page 1, after line 15 insert:

"29-05-11.1. Duty of peace officer to enter warrant."

Page 1, line 16, replace "criminal justice agency" with "peace officer" and after "fugitive" insert "and does not execute the warrant"

Page 1, line 17, after the period insert "Warrants of arrest for failure to pay fines or fees may be entered at the discretion of the peace officer."

Page 1, line 18, after "outside" insert "the county or state"

Page 1, line 19, after "which" insert "counties or"

Re-number accordingly

VR
2/16/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1416

Page 1, line 1, replace the first "section" with "sections" and remove "a new subsection to section"

Page 1, line 2, replace "12-60-16.2" with "29-05-11.1"

Page 1, remove lines 14 through 19

Page 5, after line 29, insert:

"SECTION 3. Section 29-05-11.1 of the North Dakota Century Code is created and enacted as follows:

29-05-11.1. Duty of peace officer to enter warrant. A peace officer who receives a warrant for the arrest of a fugitive and does not execute the warrant shall enter the warrant in the central warrant information system. A warrant of arrest for the failure to pay a fine or fee may be entered at the discretion of the peace officer. A criminal justice agency may specify whether the agency will extradite from outside the county or state and the county or state from which the agency will extradite."

Renumber accordingly

Date: 2/16/09
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1416

HOUSE JUDICIARY COMMITTEE

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☐ DP ☐ DNP ☒ DP AS AMEND ☐ DNP AS AMEND

Motion Made By Rep. Delmore Seconded By Rep. Wolf

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Vig	✓	
Rep. Dahl			Rep. Wolf	✓	
Rep. Hatlestad	✓		Rep. Zaiser	✓	
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 12 No 0

Absent 1

Floor Carrier: Rep. Griffin

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1416: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1416 was placed on the Sixth order on the calendar.

Page 1, line 1, replace the first "section" with "sections" and remove "a new subsection to section"

Page 1, line 2, replace "12-60-16.2" with "29-05-11.1"

Page 1, remove lines 14 through 19

Page 5, after line 29, insert:

"SECTION 3. Section 29-05-11.1 of the North Dakota Century Code is created and enacted as follows:

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Renumber accordingly

2009 SENATE JUDICIARY

HB 1416

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB1416

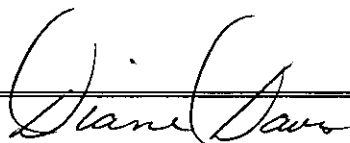
Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 3/17/09

Recorder Job Number: 11122

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

Relating to the power of the attorney general to issue administrative subpoenas for bureau investigations and the duty of criminal justice agencies to enter warrants into the central warrant information system, relating to registration requirements for sexual offenders and offenders against children.

Representative Dahl – Introduces the bill. Gives an overview of the bill.

Jonathan Byers – Attorney General's Office – See written testimony.

Senator Fiebiger – Asks about issuing a subpoena for any criminal matter being investigated.

Byers – States the intent of this is to target out of state companies and the records they may have. He tried to make sure in drafting this they weren't going to run into a situation where they didn't envision a particular circumstance. He wanted it left broad enough to cover any possible need for this administrative subpoena.

Senator Fiebiger – Said he is unclear about what is meant by information.

Byers – Says the intent of this is to get identity. There are other federal laws which actually protect the content of e-mail and chat conversations where they would have to go through a neutral and detached magistrate to overcome that privacy. They are after the identity of the subscriber.

Senator Fiebiger – Asks if that could be gotten with just records or do you need to have a telephone conversation with those people to get the information verbally. He says information to him is different than records.

Byers – Replies it would be nice to have a document and explains that the document could be attached to the search warrant application going to the judge.

Senator Fiebiger – Asks if records would be enough.

Byers – Responds, yes, we used both words to make sure they cover all possible ways this may play out.

Senator Schneider – Asks how many administrative subpoenas have been issued since 2007 by the Attorney General.

Byers – Says maybe 6 to 8 cases.

Senator Schneider – Asks, if he uses the four part test to guide the office as to when you issue subpoenas.

Byers – Says they use the same kind of caution, is the information relevant to the crime. We would use this as a last resort.

Senator Olafson – Asks if this is the only process the only way you can get to that individual computer, the internet service provider has to provide you that information under a subpoena.

Byers – Responds yes and he thinks this is the crux to the whole problem. If we can't identify the person then that investigation may stop right there.

Senator Olafson – Asks him to explain compel.

Byers – He explains if they put up resistance they would have to go through the court system in the other state.

Senator Nething – Asks him to explain the difference between the National Crime Information Center and the Central Warrant Information Center.

Byers – Explains the Central Warrant Information Center is a state data base, the National Crime Information Center is a national data base of not just warrants but other information is also contained in there.

Senator Nething – Asks if the National encompasses the state.

Byers – Responds, it does but they wanted to make sure they had it in both places, they were not sure if NCIC would allow them to dump from NCIC back into their CWIS (Central Warrant Information System).

Senator Nething – Asks about credible threat.

Byers – He wants to convey to the committee that they need to think about worse case scenarios. Now with threats on My Space or Face Book they have to someday subpoena those companies to find out who is hosting those threatening comments.

Senator Fiebiger – Asks what the recourse is for someone that is issued one of these subpoenas.

Byers – States the problem with the typical case is if you know who the person's records are that you're seeking, you can provide them notice. Here they don't know who to provide notice to because they don't know who sent the e-mails.

Special Agent Steve Harstad – In support of – See written testimony.

Senator Olafson – Asks if they can spoof their IP address.

Harstad – Responds they have not run into spoofing IP addresses. The biggest problem they see is someone borrowing a neighbors wireless.

Senator Fiebiger – Questions him about the broad language. He asks would it be sufficient to do what he needs done.

Harstad – Replies, yes.

Opposition

Ladd Erickson – Mclean States Attorney – Opposes section 1 of the bill. His believe says that it actually weakens their ability to get records on an Interstate basis. He says Congress has already addressed a number of the problems about state courts getting information from internet providers in other states. He explains federal law. See written testimony.

Senator Nething – Asks him if he testified in the House on this bill.

Erickson – Replies no, he thought they would work it out, but they didn't.

Senator Nething – Said it seems to him that if the State's Attorney had a problem with the prosecutor they would just turn it over to the Attorney General's office and let them prosecute it.

Erickson – His suggestion is to just have it apply to the AG's prosecutions. Then they don't have to worry about it. Or just give the Attorney General the same power as the state's attorney's to get records that would match what goes on in federal law. He goes on to explain subpoena power by the federal government.

Senator Olafson – Asks if both options can be in the code.

Erickson – Said, he will end up prosecuting them. State's Attorney's have had no problem getting the information.

Senator Olafson – Asks if it would more expedient.

Erickson – Reads paragraph F.

Senator Fiebiger – Asks if he is using a different process than the others are, you aren't having a problem but they are.

Erickson – Said he doesn't know what the problem is, typically when BCI is doing an investigation the state's attorney is doing the legal work for him in the investigation as they do for local law enforcement. He said there just hasn't been a problem.

Erickson – He said he doesn't know where the problem is.

Senator Nething – Asks if BCI is doing broader investigations than his people do locally.

Erickson – Replies, no, it depends on the case.

Senator Nething – Asks him, if they say they have a problem, would you accept that?

Erickson – Replies, no. He said he has checked with everyone in his camp and no one has trouble getting subpoenas and information.

Cynthia Feland – Burleigh County State's Attorney - She clarifies the procedure that states attorneys use which is the States Attorneys Inquiry. At the present time that is not available to the attorney general's office just because of the statutory language works. So there wouldn't be a way for Mr. Byers to use that same process today. She explains how it works in the small counties and the larger counties. She says they have never had a problem. She hands out some samples of orders they use to start the process. She said they have a process that works. She said this is not an administrative proceeding, it is a criminal investigation. She said we need to be careful how that meshes in with federal law.

Senator Nething – Asked her if she would be involved with the Attorney General's office in one of these cases.

Feland – States she has a case right now with them.

Senator Nething – Asks what % of cases they work with them.

Feland – She is unsure how many, but says any time they are looking for information off a computer it goes to BCI for assistance.

Senator Nething – Asks how many cases would need this subpoena power.

Feland – Says it would never be needed, BCI would come to us. The only time this would come into play is if a prosecutor has requested Mr. Byer's assistance in conducting an

investigation and in that case could have a local prosecutor do it but if he were to try doing it himself he can't under current law.

Senator Nething – Does not understand her objection if it isn't detrimental to her.

Feland – Says this may not have any effect on the majority of her cases, it does in smaller jurisdictions.

Senator Fiebiger – Asks if her argument is that these aren't going to be seen as administrative agencies.

Feland – They may start out as administrative, you may discover a crime. She states this is a pure criminal investigation style proceeding and they wanted it treated as such.

Senator Fiebiger – Asks if her concern is that these cases may be challenged.

Feland – Replies, yes.

Senator Lyson – Asks her how many organizations have a skilled investigator in their departments that would take care of computer crimes. For criminal investigations on sexual things within the computer.

Feland – Replies, every major jurisdiction has an investigator who does personal crimes.

Senator Lyson – States maybe ½ dozen, and how many state's attorneys have the ability to make these subpoenas out without other assistance.

Feland – Responds, all of them, this is not a hard process to do.

Senator Lyson – Asks her if Mr. Byers shouldn't have the same access out in the field as she does.

Feland – Says absolutely, which is why Mr. Erickson proposed the amendment to give them the same authority as they have.

Close the hearing 1416.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB1416

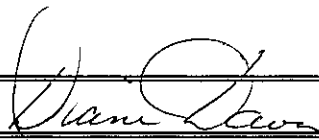
Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 3/18/09

Recorder Job Number: 11195

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

Committee work

Committee discusses the subpoena power of the Attorney General. Senator Lyson tells of speaking with the State's Attorney who filed for a subpoena to take to Montana but Montana doesn't recognize ND subpoenas. He also brings up the point that there are state's attorney's out there that want the Attorney General to have the same power. Senator Schneider asks if it would be possible to give the Attorney General the same authority that the state's attorney's have but to also to provide him with administrative subpoena option. He thinks that administrative subpoena is a novel area of law and would like them to have the same options as the state's attorneys. Senator Olafson mentions a conversation he had with Chief Deputy Trenbeth who said if we pass this both options are still on the table for either to use. The committee thinks there is some conflicting testimony regarding the time it takes getting the information. The committee decides to pursue some middle ground and put together an amendment. Senator Fiebiger and Senator Olafson will work on the amendment.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB1416

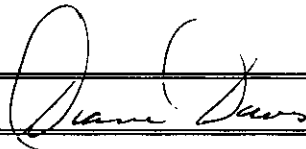
Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 3/23/09

Recorder Job Number: 11367

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

Committee work

Senator Fiebiger explains his talk with the Deputy Attorney General and it doesn't appear that the Attorney General's office wants to change the language that is in there. Also it doesn't appear that Mr. Erickson speaks for all state's attorneys. He said the Attorney General is comfortable with the bill as it is. He says other states are using this.

Senator Olafson says if we pass this both processes will be in place.

Senator Lyson mentions the state's attorney he spoke with has no problem with this bill.

Senator Fiebiger moves a do pass

Senator Olafson seconds

Vote- 6-0

Senator Fiebiger will carry

Date: 5/23
Roll Call Vote #: /

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

1416

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Sen. Giesiger Seconded By Sen. Nelson

[illegible]

Total (Yes) 6 (N) 0

Absent

Floor Assignment Sen Liebig

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1416, as engrossed: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1416 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

HB 1416

**HOUSE BILL 1416 TESTIMONY
HOUSE JUDICIARY COMMITTEE
February 3rd, 2009
PRAIRIE ROOM**

By Jonathan Byers, Assistant Attorney General

Chairman DeKrey and Members of the Committee:

My name is Jonathan Byers and I appear on behalf of the Attorney General. I wish to testify in favor of House Bill 1416.

Section one of the bill expands subpoena power given to the attorney general in the 2007 Legislative session. In that legislation, the attorney general was given power to issue an administrative subpoena in luring minors by computer cases. This is particularly helpful when an out of state internet service provider holds subscription information for an email or chat conversation, and peace officers in North Dakota want the identity of the subscriber. The administrative subpoena avoids having to use the courts in another state to obtain a search warrant.

There is a similar need for child pornography cases. Internet service providers and phone companies may hold subscriber information that right now is only available by search warrants issued in the state where the central office of the company is located. We find that out of state companies are willing to provide the subscriber records as long as they have something, like an administrative subpoena, to place in their file.

Section two is partly driven by a provision of the Adam Walsh Act that requires warrants for failure to register as a sexual offender to be entered into the National Crime Information Center wanted person file. This brought to mind the following question: why is there no requirement that all warrants be entered into a warrant database? Section two would impose such a requirement, but the law enforcement agency will still be able to specify where they are willing extradite from.

This morning it was brought to my attention that section 12.1-60-16.2 may not be the best section to place the warrant requirement. I would ask that the committee hold this bill until I can come back with an amendment to place it in a more appropriate section.

Section three is the second installment of our Adam Walsh compliance efforts. On page 2 of the bill, there is language adding conspiracies to commit crimes as registration offenses. On page 3 of the bill there is language clarifying when temporary workers or visitors are required to register. Page 4 contains additional language requiring entry of failure to register warrants into NCIC. Page 5 of the bill cleans up the language of the statute to conform to actual practice. The attorney has been providing the notice to the offender of the offender's assigned risk level since that process began back in November 2001.

The Attorney General asks for a do pass. I would be happy to answer any questions.

Testimony on HOUSE BILL NO. 1416
Tuesday, February 3, 2009
Presented by S/A Tim Erickson

The Bureau of Criminal Investigation Internet Crimes Against Children task force investigates cases involving the exploitation of children on the Internet as well as provides technical and investigative assistance to local law enforcement agencies. These investigations are often times conducted on the Internet in real time. In most cases the investigations resolve back to an (IP) internet protocol address which is maintained by an (ISP) internet service provider.

ISPs are commercial organizations which provide individuals and businesses access to the Internet. ISPs provide a range of functions for their customers, including access to the Internet, web hosting, e-mail, remote storage, and co-location of computers and other communications equipment. ISPs can offer various means by which to access the Internet including telephone based dial-up, broadband based access via a digital subscriber line (DSL) or cable television, dedicated circuits, or satellite based subscription. ISPs typically charge a fee based upon the type of connection and volume of data, called bandwidth, that the connection supports. Many ISPs assign each subscriber an account name, such as a user name or screen name, an e-mail address, and an e-mail mailbox, and the subscriber typically creates a password for the account. By using a computer equipped with a telephone or cable modem, the subscriber can establish communication with an ISP over a telephone line or through a cable system, and can access the Internet by using his or her account name and password.

A user accesses the Internet from a computer network or internet service provider ("ISP") that connects to the Internet. The ISP assigns each user an internet protocol ("IP") address. Each IP address is unique. Every computer or device on the Internet is referenced by a unique IP address the same way every telephone has a unique telephone number. Each time an individual accesses the Internet, the computer from which that individual initiates access is assigned an IP address. The ISP logs the date, time and duration of the Internet session for each IP address and can identify the user of that IP address for such a session from these records, depending on the ISP's record retention policies.

During a typical Internet investigation the agents are left at a dead end when investigating offenses with an IP address that resolves to an out-of-state provider. This is a common occurrence as some of the largest ISPs in the state of North Dakota are Midcontinent Communications in Sioux Falls SD; Cable One, Phoenix AZ; and Qwest Communications located in Denver Colorado. A Subpoena - An order compelling a person to appear to testify or produce documents - is required by the providers before they will release subscriber information. Agents are able to obtain the subscriber information from ISPs located in the state of North Dakota with the use of a search warrant. However, a search warrant is only valid in the Judicial District from which it is obtained which excludes out-of-state ISPs. Unlike a search warrant which allows access to subscriber content, a Subpoena only allows for the disclosure of subscriber information. The subscriber information, such as name and address, leads investigators back to the Judicial District where the subscriber is physically located and

where they can provide probable cause to a District Court Judge for the issuance of a search warrant to obtain content.

Subpoenas are needed to obtain subscriber information in criminal investigations conducted by agents on a daily basis. They would be used to identify the subscriber information for cell phones used in criminal and narcotics cases. Subscriber information is crucial in the investigation of threatening e-mails and online fraud cases to identify subjects. Identifying online user and screen names has played an important role in major investigations such as child abductions, missing persons and homicide cases.

BCI agents are currently relying on federal law enforcement agencies to issue administrative summons to out-of-state providers on cases that the federal law enforcement agencies can work jointly with BCI. There are limitations to the type of investigations for which this process is available. Federal Agents are not always available at the time investigations are ongoing and immediate access to subscriber information may be crucial to the successful completion of an investigation or the return of an abducted child. In addition, a threat to a school wouldn't typically be a matter in which federal authorities would become involved. Nonetheless, it may be a criminal violation in North Dakota and would be a priority for the potentially endangered students and local law enforcement.

The Attorney General currently has subpoena power pursuant to North Dakota Century Code Section 12.1-20-05.1(3), as it relates to luring minors by computer. That statute was enacted last legislative session. Expanding this administrative subpoena power to include other duties the Attorney General is required by law to enforce and

investigate will allow BCI agents to perform their duties more efficiently and effectively for the citizens of North Dakota.

Attachment 1416
AB 1416

**ENGROSSED HOUSE BILL 1416 TESTIMONY
SENATE JUDICIARY COMMITTEE
March 17th, 2009
FORT LINCOLN ROOM**

By Jonathan Byers, Assistant Attorney General

Mr. Chairman and Members of the Committee:

My name is Jonathan Byers and I appear on behalf of the Attorney General. I wish to testify in favor of Engrossed House Bill 1416.

Section one of the bill expands subpoena power given to the attorney general in the 2007 Legislative session. In that legislation, the attorney general was given power to issue an administrative subpoena in luring minors by computer cases. This is particularly helpful when an out of state internet service provider holds subscriber information for an email or chat conversation, and peace officers in North Dakota want the identity of the subscriber. The administrative subpoena avoids having to use the courts in another state to obtain a search warrant.

There is a similar need for child pornography investigations and other criminal investigations. Let me provide a couple of examples. Let's say a specific, credible threat is emailed to a North Dakota school, and the email service used is Midcontinent Communications. The central office for Midcontinent Communications is in Sioux Falls, S.D. Without administrative subpoena authority, a B.C.I. agent would have to contact a law enforcement official in S.D., brief them on the case and convince that detective to take the information to a prosecutor in Minnehaha County.

The detective would then have to persuade the S.D. prosecutor to draft a search warrant and approach a S.D. circuit judge, who would then issue a search warrant to obtain subscriber information for the Midcontinent email identity. All of these things would have to happen in time to respond to the specific, credible threat contained in the email.

Another example comes from the cybercrime investigations being conducted by some of our agents at BCI. The cybercrime agents may sign on to a peer to peer network such as Limewire or Bearshare and identify an IP address that they know is in North Dakota and trading child pornography. If the ISP the client is using is Qwest, then the agent will have to go through the same process in Colorado to obtain the subscriber identity from Qwest that I described above.

We have discovered from the internet luring cases that out of state companies, like Midcontinent, Qwest, and Yahoo are willing to provide the subscriber records as long as they have something, like an administrative subpoena, to place in their file.

There has been a suggestion that the state's attorney's inquiry process should be used as the mechanism to obtain an investigative subpoena for the subscriber records. However, if the concern is that an administrative subpoena is not issued upon probable cause determined by a neutral and detached magistrate, then that same concern should apply to a state's attorney's inquiry subpoena. In that process, the judge only approves the initiation of the state's attorney's inquiry, and not the issuance of individual subpoenas from that inquiry.

In United States v. Powell, 379 U.S. 48 (1964) the United States Supreme Court determined that administrative agencies are not bound by probable cause standards in issuing subpoenas. Administrative subpoenas are upheld as long as 1) the investigation is conducted pursuant to a legitimate purpose, 2) the information requested is relevant to this purpose, 3) the agency is not already in possession of the information, and 4) the agency follows the appropriate statutory procedures. Id. at 58-59. None of the federal circuits that have examined the issue have objected to the use of civil administrative subpoenas in criminal cases. Doe v. United States, 253 F.3d 256 (6th Cir. 2001)

Section three is the second installment of our Adam Walsh compliance efforts. On the bottom of page 1 and again on page 2 of the bill, there is language adding conspiracies to commit crimes as registration offenses. On the bottom of page 2 there is language clarifying when temporary workers or visitors are required to register. The amendment on page 3 and page 4 of the bill cleans up the language of the statute to conform to actual practice. The attorney general has been providing the notice to the offender of the offender's assigned risk level since that process began back in November 2001.

Page 4 contains language requiring entry of failure to register warrants into the National Crime Information Center wanted person file, which is required by the Adam Walsh Act. Drafting this amendment brought to mind the following question: why is there no requirement that all warrants be entered into a warrant database? Section three on page 5 would impose such a requirement, with the warrants being entered into our state Central Warrant Information System, which would then be

electronically fed into CWIS. Law enforcement still has the discretion not to enter warrants for the nonpayment of fines or fees, and can specify where they will extradite from.

The Attorney General asks for a do pass. I would be happy to answer any questions.

Testimony on HOUSE BILL NO. 1416
Tuesday, March 17, 2009
Presented by S/A Steve Harstad

The Bureau of Criminal Investigation Internet Crimes Against Children task force investigates cases involving the exploitation of children on the Internet as well as provides technical and investigative assistance to local law enforcement agencies. These investigations are often times conducted on the Internet in real time. In most cases the investigations resolve back to an (IP) internet protocol address which is maintained by an (ISP) internet service provider.

ISPs are commercial organizations which provide individuals and businesses access to the Internet. ISPs provide a range of functions for their customers, including access to the Internet, web hosting, e-mail, remote storage, and co-location of computers and other communications equipment. ISPs can offer various means by which to access the Internet including telephone based dial-up, broadband based access via a digital subscriber line (DSL) or cable television, dedicated circuits, or satellite based subscription. ISPs typically charge a fee based upon the type of connection and volume of data, called bandwidth, that the connection supports. Many ISPs assign each subscriber an account name, such as a user name or screen name, an e-mail address, and an e-mail mailbox, and the subscriber typically creates a password for the account. By using a computer equipped with a telephone or cable modem, the subscriber can establish communication with an ISP over a telephone line or through a cable system, and can access the Internet by using his or her account name and password.

A user accesses the Internet from a computer network or internet service provider ("ISP") that connects to the Internet. The ISP assigns each user an internet protocol ("IP") address. Each IP address is unique. Every computer or device on the Internet is referenced by a unique IP address the same way every telephone has a unique telephone number. Each time an individual accesses the Internet, the computer from which that individual initiates access is assigned an IP address. The ISP logs the date, time and duration of the Internet session for each IP address and can identify the user of that IP address for such a session from these records, depending on the ISP's record retention policies.

During a typical Internet investigation the agents are left at a dead end when investigating offenses with an IP address that resolves to an out-of-state provider. This is a common occurrence as some of the largest ISPs in the state of North Dakota are Midcontinent Communications in Sioux Falls SD; Cable One, Phoenix AZ; and Qwest Communications located in Denver Colorado. A Subpoena - An order compelling a person to appear to testify or produce documents - is required by the providers before they will release subscriber information. Agents are able to obtain the subscriber information from ISPs located in the state of North Dakota with the use of a search warrant. However, a search warrant is only valid in the Judicial District from which it is obtained which excludes out-of-state ISPs. Unlike a search warrant which allows access to subscriber content, a Subpoena only allows for the disclosure of subscriber information. The subscriber information, such as name and address, leads investigators back to the Judicial District where the subscriber is physically located and

where they can provide probable cause to a District Court Judge for the issuance of a search warrant to obtain content.

Subpoenas are needed to obtain subscriber information in criminal investigations conducted by agents on a daily basis. They would be used to identify the subscriber information for cell phones used in criminal and narcotics cases. Subscriber information is crucial in the investigation of threatening e-mails and online fraud cases to identify subjects. Identifying online user and screen names has played an important role in major investigations such as child abductions, missing persons and homicide cases.

BCI agents are currently relying on federal law enforcement agencies to issue administrative summons to out-of-state providers on cases that the federal law enforcement agencies can work jointly with BCI. There are limitations to the type of investigations for which this process is available. Federal Agents are not always available at the time investigations are ongoing and immediate access to subscriber information may be crucial to the successful completion of an investigation or the return of an abducted child. In addition, a threat to a school wouldn't typically be a matter in which federal authorities would become involved. Nonetheless, it may be a criminal violation in North Dakota and would be a priority for the potentially endangered students and local law enforcement.

The Attorney General currently has subpoena power pursuant to North Dakota Century Code Section 12.1-20-05.1(3), as it relates to luring minors by computer. That statute was enacted last legislative session. Expanding this administrative subpoena power to include other duties the Attorney General is required by law to enforce and

investigate will allow BCI agents to perform their duties more efficiently and effectively for the citizens of North Dakota.

Attachment 3
HB 1416

1 Puerto Rico) 320 F3d 26) and (criticize) Airway Corp. Privacy Litig. (2005, ND Sup. 9).

plow that pager service provided content of their text messages. claim violation of 18 USCS § 2702 Communications Act (SCA); allegations provider disclosed contents of backup copies without authorization fell within SCA of "electronic storage" and employee service under SCA. Quon v Arch Wireless (2004, CD Cal) 309 F Supp 2d 1201. o dismiss was denied because plaintiff alleged claims under Title II of Electronic Privacy Act (ECPA), 18 USCS § 2702. untiff claimed defendants intentionally out authorization password protected internet web site and obtained access to communications they were not authorized to. idants failed to show they satisfied requirements ECPA. Therapeutic Research Facility (2007, ED Cal) 488 F Supp 2d 901. 23.

not established or not sufficiently alleged. ert properly granted Fed. R. Civ. P. 12(b)(6). lsmisss action against provider of satellite sion and data processor in class action. 2707 alleging violation of 18 USCS § 2702. ronic Communications Privacy Act (ECPA) '02 and 2707 were clear that liability y on electronic service providers, and not ital television provider nor data processor. rs of electronic communications service in nunications that were basis of plaintiff iting assertion of secondary liability claim y or abetting based on 18 USCS 2707. e contrary to sections 2702 and 2707. I supported by legislative history. email. DirecTV, Inc. (2006, CA9 Cal) 57.

's claim of violation of Electronic Communications Act (18 USCS §§ 2701 et seq.) through company hired consultant, let it internal e-mail system in order to communicate on systems integration project. 1 contents of its e-mail messages to press. any is in petrochemical industry, and does "electronic communication service" to paid under § 2702(a)(1). Andersen Consulting (1998, ND Ill) 991 F Supp 1041. concerning communications accessed from stem by former wife fails to state claim for 8 USCS § 2702(a), where it is not enough. county divulged plaintiff's electronically nunications, because liability under statute. county must provide "electronic communication to public," which it does not. Conner (D Ga) 130 F Supp 2d 1370.

failed sufficiently to plead that airline cess passenger name records was unlawfully given in violation of their privacy policy. ie authority for their opposition memorandum. orted assertion that consent under 18 USCS

2702(b)(3) was not lawful if given in breach of contract. In re Am. Airlines, Inc., Privacy Litig. (2005, ND Tex) 370 F Supp 2d 552, motion gr, in part, motion den, in part, dismd; motion gr, dismd (2005, ND Tex) 2005. Dist LEXIS 37739.

Defenses
Provider of wireless services to city employer was not

2703. Required disclosure of customer communications or records

(a) Contents of wire or electronic communications in electronic storage. A governmental entity may require the disclosure by a provider of electronic communication service of the contents of a wire or electronic communication, that is in electronic storage in an electronic communications system for one hundred and eighty days or less, only pursuant to a warrant issued using the procedures described in the Federal Rules of Criminal Procedure by a court with jurisdiction over the offense under investigation or equivalent State warrant. A governmental entity may require the disclosure by a provider of electronic communications services of the contents of a wire or electronic communication that has been in electronic storage in an electronic communications system for more than one hundred and eighty days by the means available under subsection (b) of this section.

(b) Contents of wire or electronic communications in a remote computing service. (1) A governmental entity may require a provider of remote computing service to disclose the contents of any wire or electronic communication to which this paragraph is made applicable by paragraph (2) of this subsection—

(A) without required notice to the subscriber or customer, if the governmental entity obtains a warrant issued using the procedures described in the Federal Rules of Criminal Procedure by a court with jurisdiction over the offense under investigation or equivalent State warrant; or

(B) with prior notice from the governmental entity to the subscriber or customer if the governmental entity—

(i) uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury or trial subpoena; or

(ii) obtains a court order for such disclosure under subsection (d) of this section; except that delayed notice may be given pursuant to section 2705 of this title [18 USCS § 2705].

(2) Paragraph (1) is applicable with respect to any wire or electronic communication that is held or maintained on that service—

(A) on behalf of, and received by means of electronic transmission from (or created by means of computer processing of communications received by means of electronic transmission from), a subscriber or customer of such remote computing service; and

(B) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing.

(c) Records concerning electronic communication service or remote computing service.

(1) A governmental entity may require a provider of electronic communication service or remote computing service to disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications) only when the governmental entity—

(A) obtains a warrant issued using the procedures described in the Federal Rules of Criminal Procedure by a court with jurisdiction over the offense under investigation or equivalent State warrant;

(B) obtains a court order for such disclosure under subsection (d) of this section;

(C) has the consent of the subscriber or customer to such disclosure;

(D) submits a formal written request relevant to a law enforcement investigation concerning telemarketing fraud for the name, address, and place of business of a subscriber or customer of such provider, which subscriber or customer is engaged in telemarketing (as such term is defined in section 2325 of this title [18 USCS § 2325]);

for

AMERICAN LIBRARY

(E) seeks information under paragraph (2).

(2) A provider of electronic communication service or remote computing service shall disclose to a governmental entity the—

(A) name;

(B) address;

(C) local and long distance telephone connection records, or records of session times and durations;

(D) length of service (including start date) and types of service utilized;

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

(F) means and source of payment for such service (including any credit card or bank account number),

of a subscriber to or customer of such service when the governmental entity uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury or trial subpoena or any means available under paragraph (1).

(3) A governmental entity receiving records or information under this subsection is not required to provide notice to a subscriber or customer.

(d) Requirements for court order. A court order for disclosure under subsection (b) or (c) may be issued by any court that is a court of competent jurisdiction and shall issue only if the governmental entity offers specific and articulable facts showing that there are reasonable grounds to believe that the contents of a wire or electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation. In the case of a State governmental authority, such a court order shall not issue if prohibited by the law of such State. A court issuing an order pursuant to this section, on a motion made promptly by the service provider, may quash or modify such order, if the information or records requested are unusually voluminous in nature or compliance with such order otherwise would cause an undue burden on such provider.

(e) No cause of action against a provider disclosing information under this chapter. No cause of action shall lie in any court against any provider of wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order, warrant, subpoena, statutory authorization, or certification under this chapter [18 USCS §§ 2701 et seq.].

(f) Requirement to preserve evidence. (1) In general. A provider of wire or electronic communication services or a remote computing service, upon the request of a governmental entity, shall take all necessary steps to preserve records and other evidence in its possession pending the issuance of a court order or other process.

(2) Period of retention. Records referred to in paragraph (1) shall be retained for a period of 90 days, which shall be extended for an additional 90-day period upon a renewed request by the governmental entity.

(g) Presence of officer not required. Notwithstanding section 3105 of this title [18 USCS § 3105], the presence of an officer shall not be required for service or execution of a search warrant issued in accordance with this chapter [18 USCS §§ 2701 et seq.] requiring disclosure by a provider of electronic communications service or remote computing service of the contents of communications or records or other information pertaining to a subscriber to or customer of such service.

(Added Oct. 21, 1986, P. L. 99-508, Title II, § 201(a), 100 Stat. 1861; Nov. 18, 1988, P. L. 100-690, Title VII, Subtitle B, §§ 7038, 7039, 102 Stat. 4399; Sept. 13, 1994, P. L. 103-322, Title XXXIII, § 330003(b), 108 Stat. 2140; Oct. 25, 1994, P. L. 103-414, Title II, § 207(a), 108 Stat. 4292; April 24, 1996, P. L. 104-132, Title VIII, Subtitle A, § 804, 110 Stat. 1305; Oct. 11, 1996, P. L. 104-293, Title VI, § 601(b), 110 Stat. 3469; Oct. 11, 1996, P. L. 104-294, Title VI, § 605(f), 110 Stat. 3510; June 23, 1998, P. L. 105-184, § 8, 112 Stat. 522; Oct. 26, 2001, P. L. 107-56, Title II, §§ 209(2), 210, 212(b)(1), 220(a)(1), 220(b), 115 Stat. 283, 285, 291, 292; Nov. 2, 2002, P. L. 107-273, Div B, Title IV, § 4005(a)(2), Div C, Title I, Subtitle A, § 11010, 116 Stat. 1812, 1822; Nov. 25, 2002, P. L. 107-296, Title II, Subtitle C, § 225(h)(1), 116 Stat. 2158; Jan. 5, 2006, P. L. 109-162, Title XI, Subtitle C, § 1171(a)(1), 119 Stat. 3123.)

NO STATE LAW VIOLATION

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On page 1, lines 8-13, replace with:

SECTION 1. Section 11-16-15 of the North Dakota Century Code is amended and reenacted as follows:

11-16-15. Criminal act causing death - Felony - Inquiry - State's attorney may subpoena witnesses. If a state's attorney is aware of any violation or criminal act causing a death or has reason to believe a felony has been committed, the state's attorney may, prior to a crime being charged, inquire into the facts of the violation or criminal act, and, with the consent and approval of the district judge of the county, for such purpose the state's attorney may issue a subpoena for any person who the state's attorney has reason to believe has any information or knowledge of the violation, to appear at a time and place designated in such subpoena to testify concerning the violation. The subpoena must be directed to the sheriff of the county and must be served and returned to the state's attorney in the same manner as subpoenas are served and returned in criminal cases. Each witness must be sworn to testify under oath and to make true answer to all questions which may be propounded to the witness by the state's attorney touching the violation or criminal act. The testimony of every witness must be reduced to writing and must become a part of the coroner's files in the case of a death and of the state's attorney's files in all other cases. For all purposes in this section the attorney general has all powers granted to a state's attorney, and the state's prosecuting attorney may:

1. Administer oaths or affirmations to all witnesses.
2. Apply to the district court for the punishment of any witness for contempt for any disobedience of a subpoena, a refusal to be sworn or to answer as a witness, or a refusal to sign testimony of the witness.
3. Compel the attendance of witnesses or the production of documents or electronically stored data or information under the North Dakota Rules of Criminal Procedure. Any witness compelled to testify under this section is entitled to counsel and all other constitutional rights.

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

IN DISTRICT COURT
SOUTH CENTRAL JUDICIAL DISTRICT

APPLICATION AND ORDER

The State of North Dakota, through Assistant Burleigh County State's Attorney, Julie Lawyer, requests consent and approval of the District Judge to conduct a State's Attorney's Inquiry pursuant to Section 11-16-15 of the North Dakota Century Code, and to subpoena witnesses. The purpose of such inquiry would be to gather information concerning an Unauthorized Use of Personal Identifying Information investigation being conducted by the Burleigh County Sheriff's Office, which investigation involves namely a felony offense, in the City of Bismarck, County of Burleigh, on the 11th day of February, 2008.

Dated this _____ day of February, 2008.

Julie Lawyer
Assistant Burleigh County State's Attorney
BAR ID: 05661

ORDER

Pursuant to the foregoing, IT IS HEREBY ORDERED that the Assistant Burleigh County State's Attorney may conduct an inquiry concerning the matter described and that subpoenas may be issued for such inquiry.

Dated this _____ day of February, 2008.

District Judge

SUBPOENA DUCES TECUM

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

The State of North Dakota to: QWEST/QWEST WIRELESS
Security Assistant
Security Response Center
Qwest Communications Inc.
1005 17th Street, Suite 120
Denver CO 80202
PH: 303-896-2522
FAX: 303-896-4474

YOU ARE HEREBY REQUIRED to attend before the District Court for the South Central Judicial District in said State, at the Courthouse in the City of Bismarck, in Burleigh County, on the 9th day of May, 2008, at 1:30 p.m., to testify as a witness in a States Attorney's Inquiry, and you are required also to bring with you the following:

Any and all identifying information for the subscriber of Sprint Spectrum L.P. number 406-661-7689, including but not limited to the name, address, etc. , as well as the location of the cell phone tower that transmitted the call from this number on March 17, 2008, at approximately 2:09 a.m.

The conditions of this subpoena may be fulfilled by the delivery of the documentation herein requested to the Burleigh County States Attorney's Office, 514 East Thayer Avenue, Bismarck, North Dakota 58501 (Fax No. 701-221-6897) on May 9, 2008. Your attendance in person is not required.

Dated this 25th day of April, 2008.

Jeffrey Ubben
Assistant Burleigh County State's Attorney
BAR ID: 06329

March 16, 2009

QWEST/QWEST WIRELESS
Security Assistant
Security Response Center
Qwest Communications Inc.
1005 17th Street, Suite 120
Denver CO 80202

VIA FAX ONLY: (303) 896-4474

Dear Sir/Madam:

The attached subpoena is for the purpose of obtaining information necessary in the ongoing investigation for alleged criminal activities. Because of the sensitive nature of this investigation, we would request that you assist us in refraining from any contact with anyone regarding this subpoena and the information furnished thereto.

Please note that this subpoena is to subpoena records only; therefore, your attendance is not required in person on May 9, 2008.

We appreciate your cooperation and assistance in this matter. If you have any questions, please contact our office.

Sincerely,

Michelle Dresser-Ternes
Legal Assistant I
mternes@nd.gov
PIN 346F83

Enclosure

SUBPOENA DUCES TECUM

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

The State of North Dakota to:

Level 3 Communications
FAX: 720-888-5631

YOU ARE HEREBY REQUIRED to attend before the District Court for the South Central Judicial District in said State, at the Courthouse in the City of Bismarck, in Burleigh County, on the 19th day of March, 2008, at 1:30 p.m., to testify as a witness in a State's Attorney's Inquiry, and you are required also to bring with you the following:

The IP information to include but not limited to the name, address, and other identifying information for the following IP addresses: 64.154.5.202ARIN - order date 1-28-08 and 11-13-07; 64.154.5.203ARIN - order dates 1-14-08 and 1-13-08; 64.154.5.201ARIN - order dates 12-27-07 and 7-18-07.

The conditions of this subpoena may be fulfilled by the delivery of the documentation herein requested to the Burleigh County State's Attorney's Office, 514 East Thayer Avenue, Bismarck, North Dakota 58501 (Fax No. 701-221-6897) on March 19, 2008. Your attendance in person is not required.

Because of the sensitive nature of this investigation, please refrain from any contact with anyone regarding this subpoena and the information furnished thereto.

Dated this _____ day of March, 2008.

Jeffrey Ubben
Assistant Burleigh County State's Attorney
BAR ID: 06329

1 be delivered via mail or courier to the following designated agent for receipt of the records:
2

3 **Richard J. Riha**
4 **Burleigh County States Attorney**
5 **514 E. Thayer Avenue**
6 **Bismarck, ND 58501**
7 **PH. - (701) 222-6672**
8 **FAX - (701) 221-6897**

9 7. That if said Custodian of the Records for Midcontinent Communications -
10 notwithstanding the fact that his/her personal appearance is NOT required - comes to the State of
11 North Dakota in obedience to a summons/order directing him/her to produce records before said
12 District Court, the laws of the State of North Dakota and of any other states through which said
13 witness may be required to pass by ordinary course of travel to attend said investigation/trial give
14 him/her protection from arrest or service of process, civil or criminal, in connection with matters
15 which arose before his/her entrance into said state.

16 8. That the State of North Dakota will provide the witness with per diem and travel
17 expenses as set forth in the aforementioned compulsion Statutes if he/she comes to the State of
18 North Dakota in obedience to an Order issued by the State of South Dakota.

19 9. That this certificate is being made for the purpose of being presented to a judge of the
20 2nd Judicial Court, a court of record in Minnehaha County, South Dakota, where said Custodian
21 of Records now is, for an Order directing said Custodian of Records for Midcontinent
22 Communications to appear before the 2nd Judicial Circuit Court in and for Minnehaha County to
23 show cause why said Court should not issue an Order requiring the Custodian to attend and
24 testify in the above investigation/trial in the State of North Dakota with the records detailed
25 above; or in the alternative, to send the records detailed above to the designated agent for receipt
26 of said records.

27 Entered this ____ day of _____, ____.

28 Judge of the _____
State of North Dakota , Burleigh County

SA Inquiry 23

SUBPOENA DUCES TECUM

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

The State of North Dakota to:

Yahoo! Custodian of Records
701 First Avenue
Sunnyvale CA 94089
PH: 408-349-1572
FAX: 408-349-7941

YOU ARE HEREBY REQUIRED to attend before the District Court for the South Central Judicial District in said State, at the Courthouse in the City of Bismarck, in Burleigh County, on the 14th day of April, 2008, at 1:30 p.m., to testify as a witness in a State's Attorney's Inquiry, and you are required also to bring with you the following:

The subscriber information to include but not limited to the name, address, and other identifying information for Yahoo email address thorshammered@yahoo.com. As well as, the recent IP addresses used by this account, the last used IP address used by this account, and the originating IP address for this account.

The conditions of this subpoena may be fulfilled by the delivery of the documentation herein requested to the Burleigh County State's Attorney's Office, 514 East Thayer Avenue, Bismarck, North Dakota 58501 (Fax No. 701-221-6897) on April 14, 2008. Your attendance in person is not required.

Because of the sensitive nature of this investigation, please refrain from any contact with anyone regarding this subpoena and the information furnished thereto.

Dated this _____ day of March, 2008.

Jeffrey Ubben
Assistant Burleigh County State's Attorney
BAR ID: 06329

SUBPOENA DUCES TECUM

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

The State of North Dakota to:

Road Runner Hold Co. Inc.
13241 Woodland Park Rd
Herndon, VA 20171
PH: 703-345-3604
FAX: 703-345-2500

YOU ARE HEREBY REQUIRED to attend before the District Court for the South Central Judicial District in said State, at the Courthouse in the City of Bismarck, in Burleigh County, on the 4th day of March, 2008, at 1:30 p.m., to testify as a witness in a State's Attorney's Inquiry, and you are required also to bring with you the following:

The username and login information, including but not limited to, name, address, phone number, and email accounts of the user assigned IP 68.204.145.177 on February 11, 2008 at 9:00 p.m. Central Standard time.

The conditions of this subpoena may be fulfilled by the delivery of the documentation herein requested to the Burleigh County State's Attorney's Office, 514 East Thayer Avenue, Bismarck, North Dakota 58501 (Fax No. 701-221-6897) on March 4, 2008. Your attendance in person is not required.

Dated this _____ day of February, 2008.

Julie Lawyer
Assistant Burleigh County State's Attorney
BAR ID: 05693

SUBPOENA DUCES TECUM

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

The State of North Dakota to:

Bright House Network
Attn: Custodian of Records
65 S Keller Rd
Orlando, FL 32810
PH: 407-215-8086
FAX: 407-702-1351

YOU ARE HEREBY REQUIRED to attend before the District Court for the South Central Judicial District in said State, at the Courthouse in the City of Bismarck, in Burleigh County, on the 7th day of March, 2008, at 1:30 p.m., to testify as a witness in a State's Attorney's Inquiry, and you are required also to bring with you the following:

The username and login information, including but not limited to, name, address, phone number, and email accounts of the user assigned IP 68.204.145.177 on February 11, 2008 at 9:00 p.m. Central Standard time.

The conditions of this subpoena may be fulfilled by the delivery of the documentation herein requested to the Burleigh County State's Attorney's Office, 514 East Thayer Avenue, Bismarck, North Dakota 58501 (Fax No. 701-221-6897) on March 7, 2008. Your attendance in person is not required.

Dated this ____ day of March, 2008.

Julie Lawyer
Assistant Burleigh County State's Attorney
BAR ID: 05693

SUBPOENA DUCES TECUM

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

The State of North Dakota to:

SPRINT CORPORATE SECURITY
6480 SPRINT PARKWAY
OVERLAND PARK, KANSAS 66251
1-800-877-7330
FAX: 913-315-0736

YOU ARE HEREBY REQUIRED to attend before the District Court for the South Central Judicial District in said State, at the Courthouse in the City of Bismarck, in Burleigh County, on the 10th day of April, 2008, at 1:30 p.m., to testify as a witness in a State's Attorney's Inquiry, and you are required also to bring with you the following:

Any and all identifying information for the subscriber of Sprint Spectrum L.P. number 406-661-7689, including but not limited to the name, address, etc. , as well as the location of the cell phone tower that transmitted the call from this number on March 17, 2008, at approximately 2:09 a.m.

The conditions of this subpoena may be fulfilled by the delivery of the documentation herein requested to the Burleigh County State's Attorney's Office, 514 East Thayer Avenue, Bismarck, North Dakota 58501 (Fax No. 701-221-6897) on April 10, 2008. Your attendance in person is not required.

Dated this ____ day of March, 2008.

Jeffrey Ubben
Assistant Burleigh County State's Attorney
BAR ID: 06329