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Distracted Driving Discovery 101 – Basic Guidelines and Resources

by Brenda M. Johnson

Cell phones and other wireless devices have become our constant companions. Their power to distract us, however, can be catastrophic, especially where driving is concerned. The dangers of texting or making phone calls while driving are well known, which is why both state and federal laws restrict such activities. Under Ohio law, texting while driving is a misdemeanor offense, and drivers under the age of 18 are prohibited from any use of cellular phones.¹ The use of hand held phones by commercial vehicle operators is prohibited by federal law.² However, even hands-free use of these devices is a potential for disaster, as the proliferation of apps that can be accessed on phones and other wireless devices while driving has been blamed for the biggest spike in traffic deaths in fifty years.³

This means that now, more than ever, cell phone, texting, and wireless data usage records are critical sources of information in motor vehicle cases. In order to benefit from such information, however, your first priority should be making sure you know what information is available and how to obtain it. This article is meant to serve as a first-step resource for doing so.

As an initial matter, you should take every available step, as early as possible, to identify every wireless-capable device aboard the vehicle at the time of the events at issue in your case, and the wireless service provider associated with the device. Requests for such information should extend beyond cell phones, and should include tablets, iPads, laptops, GPS devices, and any other devices with wireless capability that the driver may have had access to. If you have this information available to you prior to suit, you should direct preservation letters to the providers as soon as possible, as some providers have limited

retention periods. For the same reason, if you are in suit already, you should take immediate steps to obtain this information from the carriers.

Depending on the complexity of your case and the potential need for forensic analysis, you may want to work with an expert in preparing your discovery requests. However, a sample of information to request, either at the preservation stage or subpoena stage, might include the following:

- Account activity and cellular phone tower “ping” information regarding the cellular phone number for which you are seeking discovery, for the relevant time period, which would include
 - Make, model, and ESN, IMEI, or MEID⁴ numbers for the devices associated with the account;
 - Types of services subscribed to for each device;
 - Cellular calls to and from each device, with their time of initiation and duration;
 - All alphanumeric and text messages, including SMS/MMS⁵ messages, sent to and from each device, including time of initiation or receipt;
 - All data communications with the device, including time and duration of transmission; and
 - Tower locations for cell phone towers accessed by the device during the time period at issue.

The good news is that most cell phone providers will supply you with information upon receipt of a subpoena sent by fax, and will not insist on formal service. The trick is knowing who to contact. The major cell phone providers each have

subpoena compliance departments, but the contact details are subject to change without warning. It also can be hard to determine which “provider” actually maintains records, since some well-known cell services (such as MetroPCS) are simply marketing names owned by other providers. The advent of “hybrid calling” services such as Republic Wireless raises even more questions, which will be addressed below. That said, the following is a list of the most current contact information for the major carriers:

AT&T and Cricket **(which is an AT&T subsidiary)**

Custodian of Records
11760 U.S. Highway 1, Suite 600
North Palm Beach, FL 33408
(800) 635-6480
Fax: (888) 938-4715

AT&T will accept both preservation letters and civil subpoenas by fax. You should include a cover letter with your contact information and an email address, as the requested documents will be provided by email. AT&T charges a \$35.00 processing fee for records requests, along with an additional \$10.00 for each month of records requested.

Verizon

Attn: Verizon Security Assistance Team (VSAT)
180 Washington Valley Road
Bedminster, NJ 07921
(800) 451-5242
Fax: (325) 949-6916

Verizon will accept both preservation letters and civil subpoenas by fax. Questions, but not service, can be directed to verizonlegalcompliance@verizon.com

T-Mobile and MetroPCS **(a prepaid service provided by T-Mobile)**

Custodian of Records
4 Sylvan Way

Parsippany, NJ 07054
(866) 537-0911
Fax: (973) 292-8697

Sprint and Virgin Mobile

Sprint Legal Compliance
6480 Sprint Parkway
Overland, KS 66251
(800) 877-7330
Fax: (816) 600-3111

Sprint and Virgin Mobile accept all legal demands for customer information by fax.

TracFone Wireless, Inc.

TracFone provides prepaid wireless services under various brand names, including Net10 Wireless, Straight Talk, Safelink Wireless, SIMPLE Mobile, Telcel America, and Page Plus. Questions about civil discovery can be directed to TracFone’s subpoena compliance department (800) 810-7094; however, subpoenas will only be accepted by TracFone’s registered agent in Ohio:

Corporate Creations Network, Inc.
119 E. Court Street
Cincinnati, Ohio 45202

TracFone can provide subscriber information, information on payment methods, and point of purchase information. Call, text, and “ping” information, however, may be in the possession of other carriers. Any subpoena directed to TracFone should specifically ask for the identities of all carriers that may have such information.

A Note on “Hybrid Calling Services”

Recently, certain voice over internet protocol (VoIP) providers have been branching into the consumer cell phone market, providing what are referred to as “hybrid calling” or “VoIP based/mobile connectivity” services. These calling services rely primarily on WiFi, and only fall back on cell networks when WiFi is not available. One of the more visible of these services is Republic Wireless,

which is the product name for a service provided by a company called Bandwidth.com, Inc. Google recently launched a similar service called “Project Fi.”

On its law enforcement website page, Bandwidth.com, Inc. represents that due to the nature of VoIP and its business model, “you should never assume that a number is associated with Republic Wireless even though it may appear as if the number you are investigating is ‘mobile’ in nature.”⁶ The company represents that “as a courtesy” it will verify numbers “for authorized entities without legal process,” but it is unclear whether this courtesy would extend to attorneys in civil litigation. The law enforcement guide provides for subpoenas in civil litigation to be directed to the registered agent on file with the appropriate secretary of state’s office, which in Ohio is CSC-Lawyers Incorporating Service, 50 West Broad Street, Suite 1800, Columbus, Ohio 43215. Inquiries can be directed to legal@bandwidth.com which is indicated as the “preferred method.” Google’s “Project Fi” website, on the other hand, contains no information as to how to obtain information or records relating to numbers associated with its service. ■

End Notes

1. See R.C. § 4511.204 (barring texting); R.C. § 4511.205 (barring use of cellular phones by underage drivers).
2. See 49 CFR 392.82 (barring use of handheld devices while operating commercial vehicles).
3. See Neal E. Boudette, *Biggest Spike in Traffic Deaths in 50 Years? Blame Apps*, New York Times (Nov. 15, 2016), <http://nyti.ms/2eW0eU9> (last accessed Nov. 20, 2016).
4. “ESN” stands for Electronic Serial Number. “IMEI” stands for International Mobile Equipment Identity, and “MEID” stands for Mobile Equipment Identifier. These numbers are used to uniquely identify mobile devices.
5. SMS and MMS are the two standard text messaging protocols used to send messages over a cellular network.
6. <http://bandwidth.com/law-enforcement-guide> (last accessed Nov. 18, 2016).