STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE CIRCUIT COURT FIFTH JUDICIAL CIRCUIT
State of South Carolina,	)	CASE NO: 7013-[redacted]
vs.	)	
John Doe, (a.k.a. IP Address [redacted]), Defendant.	)	(Filed Under Seal)

APPLICATION

COMES NOW the State of SOUTH CAROLINA (hereinafter "the State"), by and through the undersigned Assistant Attorney General, and hereby files, under seal, this *ex parte* Application for an Order pursuant to Title 18 United States Code Section 2703 to require **Time Warner Cable/Road Runner**, located at **13820 Sunrise Valley Drive, Herndon, VA 20171**, to provide records and other information pertaining to a certain subscriber as listed in **Attachment 1**.

Factual Background

On **February 19, 2013**, starting at approximately **12:07 AM (EDT)**, Detective Sergeant K. P. Murphy of the Berkeley County Sheriff's Office, a member of the South Carolina Internet Crimes Against Children (ICAC) Task Force, conducted a proactive investigation involving the Ares file-sharing network in an effort to combat the on-line distribution and possession of files depicting the sexual exploitation of minors. While conducting this investigation, Detective Sergeant Murphy discovered a user of the network utilizing the Internet Protocol (IP) address of [redacted] had made available for download files or portions of files to other users of the Ares network. These files contained terms known to Detective Sergeant Murphy through his training and experience to be related to child pornography.

Utilizing the publicly available peer-to-peer (P2P) "Ares Network," Detective Sergeant Murphy queried the network for a list of files offered by the user of IP address [redacted] as being currently available for downloading. The user of IP address [redacted] had **5** files available for download with file names containing terms consistent with child pornography.

A single-source download of the following files was initiated from the IP address [redacted]: (1) [redacted]; (2) [redacted]; (3) [redacted] (4) [redacted] (5) [redacted].

All of the files were video files. The first video depicts an adolescent female (12-14 years of age) lying in bed with an adult male; both are naked and the child is performing oral sex on the adult male. The second video depicts a preadolescent female (6-8 years of age) naked on a bed and bent over. She is exposing her anus and vagina and digitally penetrates her anus several times during the video. The third video depicts a preadolescent female (7-9 years of age) dancing naked while an adult male masturbates her with his finger. The scene changes and shows a naked adult male with the child as she lies on a bed. By the close-up photography, the child appears to be a virgin. The adult male then engages in sexual intercourse with the child. The fourth video depicts a preadolescent female (8-10 years of age) in a compilation of scenes where she is performing oral sex on an adult male until in the last scene, the adult male ejaculates on her face. The fifth video is a fully functioning partial download which depicts a preadolescent female (8-10 years of age) being forced to perform oral sex on an adult male. The adult male then performs anal intercourse on the child and forces her to perform oral sex on him after withdrawing his penis from her anus; he repeats this several times during the video. There is audio and throughout the video the adult male belittles the child and calls her sexually explicit names and tells her to "choke on it" and "eat the shit off my dick." The video ends with the adult male, who is morbidly obese, sitting astride the child and ejaculating in her face. Detective Murphy conducted a search for IP address [redacted] using the ARIN (Whois) database and determined that the IP address resolved back to **Time Warner Cable/Road Runner**.

Based on his training and experience, Detective Murphy believes that the subscriber associated with the IP address [redacted] is actively engaged in the distribution of child pornography. Accordingly, subscriber and account log information is therefore being sought from **Time Warner Cable/Road Runner** for this ongoing investigation of the **Sexual Exploitation of a Minor**.

Legal Background

Pursuant to 18 U.S.C. § 2703 the State is permitted to access certain subscriber records or information in the possession of an Internet or Electronic Service Provider. See § 2703 (2006). In particular, pursuant to § 2703 (c)(2), a provider of "electronic communications services" or "remote computing services," must disclose to the State basic subscriber or customer information, such as the subscriber's name, address, billing information, and other identifying records. Id. The State may obtain these records by subpoena or may request that an order for disclosure be issued under § 2703 (d). See id.

Likewise, pursuant to § 2703 (c)(1), the State may obtain "other" types of records or information concerning a subscriber, or customer, of a provider of electronic communications services or remote computing services, (not including any communication contents). See id. In order to obtain such other records, the State needs only to comply with one of the options listed under §2703(c)(1), which includes obtaining an order for disclosure under § 2703(d). See id.

An order compelling disclosure under § 2703 (d) may be issued if the State offers "specific and articulable facts showing that there are reasonable grounds to believe" that the records or other information being requested are "relevant and material to an ongoing criminal investigation," and if issued by "a court of competent jurisdiction." (hereinafter "d order") Id.

A court of competent jurisdiction includes a state court of "general criminal jurisdiction," which is "authorized by the law of that State to enter orders authorizing the use of a pen register or a trap and trace device." 18 U.S.C. § 3127(2)(B) (2006); see 18 U.S.C. § 2711(3) (2006) (stating a court of competent jurisdiction is defined by § 3127).[1] Furthermore, § 2703(d) expressly permits any court of competent jurisdiction to issue a d order. Id.

South Carolina law authorizes Circuit Courts to order the installation and use of pen registers or trap and trace devices. See S.C Code Ann. §§ 17-30-10 et seq.; §§ 17-29-10 et seq. It follows then because § 2703 (d) permits any court of general criminal jurisdiction to issue a d order that this, or any General Sessions Court, may issue a d order.

Notice to a subscriber or customer that the State is receiving information or records compelled by a d order is not required. See §2703(c)(3) (stating "a governmental entity receiving records or information under this subsection is not required to provide notice to a subscriber or customer.") The court may grant an order commanding a provider not to notify any other person of the existence of the order for a period the court deems appropriate, and in fact, "[t]he court *shall* enter such an order if it determines that there is reason to believe that notification of the existence of the order will result in:

(1) endangering the life or physical safety of an individual; (2) flight from prosecution; (3) destruction of or tampering with evidence; (4) intimidation of potential witnesses; or (5) otherwise seriously jeopardizing an investigation or unduly delaying trial."
§ 2705(b).

[1] The State submits that 18 USC §2703 (d) does not require the substance of the pen register statute be reviewed for followed. Rather, it seems that the plain language of Section 2703(d) merely requires that a court of general criminal jurisdiction have the power to authorize pen registers. See State v. Odom 382 S.C. 144, 676 S.E. 2d 124 (2009).

Requested Records and Information

The factual background giving rise to the investigation of [redacted] for **Sexual Exploitation of a Minor** is as above set forth. In furtherance of this on-going criminal investigation, the State is seeking from [redacted] (1) basic subscriber records and information; and (2) other records or information, including connection logs, pertaining to a certain subscriber, as listed in **Attachment 1**.[2]

Time Warner Cable/Road Runner is an electronic communications service provider within the ambit of §2703 because it provides subscribers access to electronic communication services, including e-mail and the Internet. **Time Warner Cable/Road Runner** is also a remote computing service provider per §2703 because it provides computer facilities for the storage and processing of electronic communications.

The records and information the State seeks from **Time Warner Cable/Road Runner** are relevant and material to this ongoing criminal investigation and are within the scope of §2703. Specifically, the records and information listed in **Attachment 1** are necessary to identify the individual(s) associated with the IP address [redacted] as well as to determine the specific location from which the crime was committed. Moreover, **Time Warner Cable/Road Runner** should not be unduly burdened because the requested records and information should be readily accessible by computer search.[3]

Notification of this Application and Order could seriously jeopardize the State's ongoing investigation by giving the subscriber an opportunity to conceal, destroy, or tamper with evidence; notify confederates; flee or continue flight from prosecution; possibly endanger the life or physical safety of law enforcement conducting the investigation; or otherwise seriously jeopardize the investigation or unduly delay trial.

Accordingly, the State alleges specific facts showing reasonable grounds to believe that the records and other information sought from **Time Warner Cable/Road Runner** are relevant and material to an ongoing criminal investigation of **Sexual Exploitation of a Minor**; that the records and information sought are appropriately compelled through a "d order" issued by this Court; and that the Application and Order need not be revealed to the subscriber.

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[2] The State does not seek the contents of any electronic communications, whether or not in electronic storage. "Electronic Storage" is a term of art, specifically defined in 18 U.S.C. § 2510(17) as "(A) any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and any storage of such communication by an electronic communication service for purposes of backup protection of such communication." Communications not in "electronic storage" include any e-mail communications received by the specified accounts that the owner or user of the account has already accessed, viewed, or downloaded.

[3] On motion by the service provider, the court may quash the 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." Id.

WHEREFORE, the State of South Carolina respectfully submits this Application pursuant to 18 US.C. § 2703 and requests that this Honorable Court grant the attached Order, directing:

(1) **Time Warner Cable/Road Runner** to produce and provide to the State of South Carolina all records and information as described in **Attachment 1**;

(2) that the Application and Order be sealed until such time as the Court directs; and

(3) **Time Warner Cable/Road Runner** not to notify or to disclose the existence or contents of this Order, except to the extent necessary to carry out the Order and not to notify any person (including the subscriber or customer to which the materials relate) of the existence of this Order for such period as the court deems appropriate.

Respectfully Submitted,

R. Kyle Senn
Assistant Attorney General

March 4, 2013
Columbia, South Carolina

ATTACHMENT 1

You are to provide the following information:

All customer or subscriber information for the **Time Warner Cable/Road Runner** account associated with the IP address [redacted] on **February 19,2013 between 12:07 AM and 5:28 PM (EDT)**.

For each such account, the information shall include:

1. The subscriber's account and login name(s);
2. The subscriber's current and previous address, if any;
3. The subscriber's telephone number or numbers;
4. The subscriber's registration IP (and time/date of registration);
5. The subscriber's related **Time Warner Cable/Road Runner** accounts;
6. The subscriber's Media Access Control address(es) associated with the account;
7. Any other information pertaining to the subscriber, including, but not limited to billing information, user connection logs and related IP address information for all accounts identified (including type and number of credit cards, student identification number, or other identifying information).