



Chuck McBride serves as Senior Vice President – Legal & General Counsel Telapex/C Spire. C Spire is a privately held, diversified telecommunications and technology services company based in Ridgeland, Mississippi, which offers a comprehensive suite of wireless communications, high-speed Internet access and a range of other telecommunications products and services, cloud, and other business and home services and products to consumers and businesses in the Southeastern United States. As General Counsel, Chuck has overall responsibility for all legal matters affecting C Spire and its holding company and all operating subsidiaries. In addition to providing legal advice and counselling on a broad array of topics and managing internal legal staff, his duties also include hiring and management of all outside company counsel. Prior to joining C Spire in 2014, Chuck was in private practice for 22 years. He was a partner at Brunini, Grantham, Grower & Hewes, PLLC, where he focused his practice primarily on commercial litigation, telecommunications and matters related to technology. While in private practice, Chuck was recognized by Best Lawyers in America® in the fields of Commercial Litigation, Litigation-Intellectual Property and Communications Law. Chuck also served on Brunini’s Board of Directors and as a Litigation Department Chairman. Chuck is a member of IADC and DRI, where he serves on the Corporate Counsel Steering Committee. He also serves on the Board of Trustees of French Camp Academy. He earned his J.D., *magna cum laude*, from the University of Mississippi School of Law and a B.S. in Industrial Engineering from Mississippi State University. Prior to attending law school, Chuck served on active duty as a United States Army officer from 1985-88. He and his wife, Mary Allen, have three adult children.

Obtaining & Using Wireless Phone Records
Fast Facts for Civil Litigators

- Call Detail Records are Protected as Customer Proprietary Network Information (“CPNI”)
 - CPNI means “information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer...that is made available to the carrier solely by virtue of the carrier-customer relationship.” 47 U.S.C. §222(h)(1)
 - “Every telecommunications carrier has a duty to protect the confidentiality of proprietary information of and relating to...customers...” 47 U.S.C. §222(a)
 - “Except as required by law or with the approval of the customer, a telecommunications carrier...shall only use, disclose, or permit access to individually identifiable [CPNI] in its provision of (A) the telecommunications service from which such information is derived, (B) services necessary to or used in, the provision of such telecommunications service...” 47 U.S.C. §222(c)(1)
 - “A telecommunications carrier shall disclose [CPNI] upon affirmative written request by the customer, to any person designated by the customer.” 47 U.S.C. §222(c)(2)
 - Exceptions for use of CPNI:
 - To initiate, render, bill and collect for telecommunications services;
 - To protect the rights and property of the carrier and/or other users;
 - To provide inbound marketing, referral or administrative services to customer for duration of call with customer consent;
 - To provide emergency services and/or communications in certain situations.
- See 47 U.S.C. §222(d) for more detailed information on exceptions.
- Tower and switch information:
 - Use requires express prior authorization unless in specifically enumerated emergency circumstances

See 47 U.S.C. §222(f)-(d), (4)(A)-(C)

- Obtaining Records from C Spire
 - What records are available:
 - Call detail, i.e., the number to or from which a call, text or picture is sent or received by or to the customer is retained by C Spire for 18 months
 - C Spire does not retain the content of text messages or pictures
 - It is possible but not readily available to obtain information regarding the tower and switch handling a call or text to determine the approximate or general location of the device at the time of the call or text
 - How to obtain records:
 - For call detail:
 - Through the affirmative written consent of the account owner in accordance with C Spire internal guidelines;
 - Subpoena
 - Subpoenas must comply with applicable law and FRCP/MRCP 45
 - C Spire currently accepts service at stores (reserving the right to cease this practice at any time)
 - Subpoenas may always be served properly under the Rules to C Spire's Agent for Service of Process, Emilie F. Whitehead
 - C Spire gives notice of subpoena to opposing party and/or owner of the account and allows generally 10 days for response
 - Location information
 - Burdensome and expensive to reconstruct
 - C Spire generally objects and requires a court order that assures reimbursement of expenses

- Generally requires expert testimony to introduce as evidence (see below)
 - Expert witness fee is \$150/hour for C Spire personnel (subject to change)
- Testimony Concerning Wireless Phone Records
 - Authentication: As a matter of course, C Spire will provide a certification meeting the requirements of FRE 902(11) and MRE 902(11) for self-authentication as a business record.
 - The Mississippi Supreme Court has held. “[T]estimony that simply describes the information in a cell phone record is properly lay testimony.” Collins v. State, 172 So. 3d 724, 743 (Miss. 2015).
 - Testimony Regarding Location Based on Wireless Phone Records:
 - “Testimony that purports to pinpoint the general area in which the cell phone user was located based on historical cellular data, requires scientific, technical or other specialized knowledge that requires expert testimony.” Collins, 172 So. 3d at 743-44.
 - “Call Detail Records identify the tower used to process the call, and will often indicate which antenna on the tower serviced the call. Knowing the coverage area of the tower or, better still, the smaller coverage area of the antenna, an expert can infer that the user was within that geographical area at the time the call was placed.” Id. at 740.
 - Coverage area is usually large. Id.
 - Phones connect to the site with the strongest signal, which may not always be the closest tower. Id. at 741.
 - Other factors:
 - Number of available cell sites;
 - Ongoing maintenance or repairs or downtime for other reasons of a particular cell site;
 - Height of tower;
 - Height and angles of antennas on a cell tower;
 - Wattage output;

- Call volume and capacity of a cell site;
- Environmental and geographical factors such as weather, topography, and density of physical structures; and
- Whether phone is used indoors or outdoors.

Id., citing James Beck, Christopher Magana & Edward J. Imwinkelreid, The Use of Global Positioning (GPS) and Cell Tower Evidence to Establish a Person's Location, Aaron Blank, The Limitations and Admissibility of Using Historical Cellular Site Data to Track the Location of a Cellular Phone, 18 Rich. J.L. & Tech. 3 (Fall 2011).

- Angulation or lateration based on multiple cell tower data when possible is more accurate. Id. at 741.
- Therefore, evidence of location based on cell phone tower records is generally admissible where properly qualified expert testimony is available, but it is subject to attack, depending on the location issue at hand.
 - For example, to prove the phone was in a given city at a time certain, such testimony would be useful.
 - On the other hand, if used in attempt to prove someone was blocks away from where they said they were at a given time, it could be suspect, depending on the factors above.

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