

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

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U.S. DISTRICT COURT  
N.D. OF ALABAMA

UNITED STATES OF AMERICA :  
 :  
 v. : CRIMINAL ACTION  
 :  
 ERIC ROBERT RUDOLPH, : NO. CR-00-S-422-S  
 :  
 Defendant :  
 :

**UNITED STATES' MOTION FOR ISSUANCE OF RULE 17(c) SUBPOENA**

Comes now the United States of America, by and through its counsel, Alice H. Martin, United States Attorney for the Northern District of Alabama, and Michael W. Whisonant, Assistant United States Attorney, and pursuant to Federal Rule of Criminal Procedure 17(c), respectfully requests that the Court enter the attached proposed Order authorizing issuance of the attached subpoena. In support of its motion, the government shows the following:

1.

Defendant Rudolph presently is housed at Jefferson County Jail awaiting trial. At Jefferson County Jail, inmates are permitted to use telephones that are available to the general population to make outgoing telephone calls. Jefferson County Jail's telephone system records each inmate's telephone calls, and these calls are stored on

a computer server maintained by AT&T Company. When an inmate is booked into the jail, the inmate is provided with a piece of paper listing a personal identification number (“PIN”) to use when making outgoing calls. This piece of paper contains an advisory to the inmate that all the outgoing telephone calls are subject to being monitored.<sup>1</sup> In addition, each time an inmate places an outgoing call using the PIN, the telephone system plays a recorded message stating that the calls are being monitored by prison staff.

2.

The United States seeks copies of the recordings of the telephone calls made by Rudolph at Jefferson County Jail. The United States respectfully submits that the Court’s authorization to obtain the recordings is not required; rather, an administrative subpoena or trial subpoena is sufficient to compel delivery of the tapes to the government. United States v. Hammond, 286 F.3d 189, 192-93 (4th Cir. 2002) (acquisition of tape of inmate’s recorded conversations pursuant to FBI subpoena was lawful and did not constitute an independent “interception” under Title III); United States v. Correa, 220 F. Supp. 2d 61, 66 (D. Mass. 2002) (finding that investigators’ review of inmate’s recorded conversations even without a subpoena was acceptable

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<sup>1</sup> If an inmate’s attorney submits written verification of the attorney-client relationship, calls to and from the attorney’s telephone numbers are not monitored.

under Title III, and was not a ground for suppressing the tapes at trial); United States v. Valencia, 711 F. Supp. 608, 610 (S.D. Fla. 1989) (government acquired tapes of inmate's recorded conversations pursuant to a DEA administrative subpoena).

3.

Given the government's ability to obtain the tapes by subpoena, the admissibility of the recorded conversations is not an issue to be resolved at this time.

4.

Pursuant to Rule 17(c) of the Federal Rules of Criminal Procedure, the United States is authorized to request that the clerk of court issue a subpoena for documents, and the Court may direct that any books, papers, documents, data or other objects designated in a subpoena be produced for inspection at a time prior to trial.

5.

The government requests that a Rule 17(c) subpoena be issued to the AT&T Company, to the attention of Don Eades, 6143 Braidwood Lane, Acworth, Georgia 30101, which presently has stored in its computer servers the recordings of telephone calls made by inmates at the Jefferson County Jail. The United States requests that the subpoena require the production of all recorded telephone conversations involving Rudolph, except any calls between Rudolph and defense counsel, during the time that he has been housed at the jail.

6.

The United States further requests that the Court direct that the production of responsive recordings be completed by December 10, 2003.

WHEREFORE, the government respectfully requests that this motion be GRANTED and that the Court enter the attached proposed Order authorizing issuance of the attached subpoena.

Respectfully submitted this the 25<sup>th</sup> day of November, 2003.

ALICE H. MARTIN  
United States Attorney

A handwritten signature in black ink, appearing to read "M. W. Whisonant", written in a cursive style.

MICHAEL W. WHISONANT  
Assistant United States Attorney

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	:	NO. CR-00-S-422-S
ERIC ROBERT RUDOLPH,	:	
	:	
Defendant	:	

ORDER

Having considered the government's motion for issuance of a subpoena under Federal Rule of Criminal Procedure 17(c), that motion is hereby GRANTED.

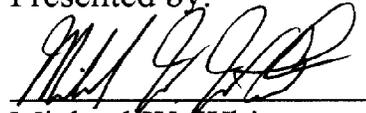
IT IS HEREBY ORDERED that a subpoena be issued for the presence of Don Eades, custodian, AT&T Company, 6143 Braidwood Lane, Acworth, Georgia 30101, at the United States District Court for the Northern District of Alabama, Southern Division, and that he be required to bring with him copies of all recorded telephone conversations involving Eric Rudolph at the Jefferson County Jail, except for any conversations between Rudolph and defense counsel; and

IT IS FURTHER ORDERED THAT copies of the recording will suffice in lieu of a court appearance if provided to counsel for the United States on or before December 10, 2003.

SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
T. MICHAEL PUTNAM  
CHIEF U.S. MAGISTRATE JUDGE

Presented by:

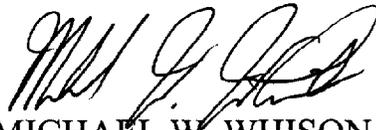


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Michael W. Whisonant  
Assistant U.S. Attorney

## CERTIFICATE OF SERVICE

This is to certify that I have this day caused a copy of the foregoing has been served on the defendant by mailing a copy of same this date by First Class, United States mail, postage prepaid, to his attorneys of record, Mr. Richard Jaffe and Ms. Judy Clark care of, Jaffe, Strickland & Drennan, 2320 Arlington Avenue, Birmingham, Alabama 35205 and Mr. William Bowen, White, Dunn & Booker, 2025 3<sup>rd</sup> Avenue North, Suite 600, Birmingham, Alabama 35203.

Done this 25<sup>th</sup> day of November, 2003.



MICHAEL W. WHISONANT  
ASSISTANT UNITED STATES ATTORNEY