

THEFT OF SERVICES
(Sale of Decoder or Descrambler)
Penal Law § 165.15(4)(b)
(Committed on or after Nov. 1, 1987)

The (*specify*) count is Theft of Services.

Under our law, a person is guilty of Theft of Services when, with the intent to avoid payment by himself or herself [*or* another person] of the lawful charge for any telecommunication service including, without limitation,

Select appropriate alternative(s):

cable television service
telegraph service
telephone service

which is provided for a charge or compensation, that person

Select appropriate alternative:

obtains or attempts to obtain such service for himself or herself (*or* another person)

avoids or attempts to avoid payment for such service by himself or herself (*or* another person)

by means of offering for sale [*or* (otherwise) making available], to anyone other than the provider of a telecommunications service for such service provider's own use in the provision of its service, any telecommunications decoder or descrambler, a principal function of which defeats a mechanism of electronic signal encryption, jamming or individually addressed switching imposed by the provider of any such telecommunications service to restrict the delivery of such service.

[NOTE: Add if in issue:

For purposes of this charge, a decoder or descrambler does not include any non-decoding and non-descrambling channel frequency converter or any television receiver-type accepted by the Federal Communications Commission.]

The following terms used in that definition have a special meaning:

INTENT means conscious objective or purpose.¹ Thus, a person acts with intent to avoid payment by himself or herself [*or* another person] of a lawful charge for a service when that person's conscious objective or purpose is to avoid payment of a lawful charge for such service.

[CABLE TELEVISION SERVICE means any and all services provided by or through the facilities of any cable television system, closed circuit coaxial cable communications system, or any microwave or similar transmission service used in connection with any cable television system or other similar closed circuit coaxial cable communications system.²]

OBTAIN includes, but is not limited to, the bringing about of a transfer, or purported transfer, of a service or of a legal interest therein, whether to the obtainer or another.³

A person ATTEMPTS to obtain [*or* avoid payment for] a service by offering for sale [*or* making available] a telecommunications decoder or descrambler when he or she intends to do so and engages in conduct which tends to effect

¹ See Penal Law § 15.05(1).

² See Penal Law § 155.00(9).

³ See Penal Law § 155.00(2).

that objective.⁴

Under our law, proof that a telecommunications decoder or descrambler, a principal function of which defeats a mechanism of electronic signal encryption, jamming, or individually addressed switching imposed by the telecommunications service provider to restrict the delivery of such service, has been offered for sale [or made available] by anyone other than the supplier of such service, is presumptive evidence that the person offering such equipment for sale [or making such equipment available] has obtained or attempted to obtain such service for [or avoided or attempted to avoid payment for such service by] himself or herself [or another person], with the intent to avoid payment by himself or herself [or another person] of the lawful charge for such service.⁵ This means that, if the People have proven beyond a reasonable doubt that such a telecommunications decoder or descrambler was offered for sale [or made available] by the defendant and that the defendant was not the supplier of the telecommunications service, you may, but you are not required to, infer from those facts that the defendant obtained or attempted to obtain such service for [or avoided or attempted to avoid payment for such service by] himself/herself [or another person], with the intent to avoid payment by himself/herself [or another person] of the lawful charge for such service.

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, each of the following three [four] elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name), offered for sale [or made available] to someone other than a telecommunications service provider, for such service

⁴See Penal Law § 110.00.

⁵See Penal Law § 165.15(4).

provider's own use in the provision of its service, any telecommunication decoder or descrambler, a principal function of which defeats a mechanism of electronic signal encryption, jamming or individually addressed switching imposed by the telecommunications system provider to restrict the delivery of such service;

2. That the defendant thereby

[Select appropriate alternative:

obtained or attempted to obtain for himself/herself (*or* another person)

or avoided or attempted to avoid payment by himself/herself (*or* another person) for]

any telecommunications service including, without limitation, cable television service [*or* telegraph service] [*or* telephone service] which was provided for a charge or compensation; and

3. That the defendant did so with the intent to avoid payment by himself/herself [*or* another person] of the lawful charge for such service.

[If whether the decoder or descrambler was FCC-approved is in issue, add:

and

4. That such decoder (*or* descrambler) was not a non-decoding and non-descrambling channel frequency converter or any television receiver-type accepted by the Federal Communications Commission.]

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty

of this crime.

If you find the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of this crime.