

THEFT OF SERVICES)¹
((Avoiding Service Charges by Misrepresentation)
Penal Law § 165.15(4)(c)
(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
gas service
steam service
sewer service
water service
electrical 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)

¹If cable television services are involved, a violation of Penal Law 165.15(4)(c) is a violation, unless the stolen service has a value in excess of \$100 or the defendant has a prior conviction for theft of services under this subsection, in which case it is a Class A Misdemeanor. If services other than cable television are involved, the crime is a Class A Misdemeanor.

by means of any misrepresentation of fact which he or she knows to be false.

[NOTE: If cable television service is involved and the defendant is charged with this crime as a Class A Misdemeanor because the value of the service exceeded \$100, add the following:

and the value of such cable television service exceeds one hundred dollars (\$100).]²

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

INTENT means conscious objective or purpose.³ 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.

[Here add, from "Additional Charges" at the end of this Article, any Penal Law § 165.15(4) presumptions which apply.]

[CABLE TELEVISION SERVICE means any and all services provided by or through the facilities of any cable television

²If cable television service is involved, this crime is elevated from a violation to a Class A Misdemeanor only if either of two alternative aggravating elements is present--the one stated in the text, and:

"and [the defendant] has been previously convicted of theft of services under [Penal Law § 165.15(4)]."

If this latter element applies, it must be charged in a special information. The defendant must be arraigned upon the special information in accordance with the procedure set forth in CPL § 200.60(3). If, upon such arraignment, the defendant admits the element, the court **must not make any reference to it in the definition of the offense or in listing the elements of the offense.** But if the defendant denies the element or remains mute, the court must add the element to the definition of the crime and the list of elements. *See, People v. Cooper*, 78 NY2d 476 (1991).

³See, Penal Law § 15.05(1).

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.^{4]}

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 person.⁵

A person ATTEMPTS to obtain [*or* avoid payment for] a service by means of a misrepresentation of fact which he or she knows to be false when he or she intends to do so and engages in conduct which tends to effect that objective.⁶

A person KNOWS that a misrepresentation of fact is false when he or she is aware that such misrepresentation is false.⁷

[VALUE means the market value of the service at the time and place of the crime.^{8]}

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, both [each] of the following two [three] elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name),

⁴See, Penal Law § 155.00(9).

⁵See Penal Law § 155.00(2).

⁶See Penal Law § 110.00.

⁷See Penal Law § 15.05(2).

⁸See Penal Law § 155.20(1), which also provides that, if market value "cannot be satisfactorily ascertained," value means "the cost of replacement of the property within a reasonable time after the crime."

[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 gas service] [or steam service] [or sewer service] [or water service] [or electrical service] [or telegraph service] [or telephone service], which is provided for a charge or compensation, by means of a misrepresentation of fact which he/she knew to be false; and

2. 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 cable television service is involved and the defendant is charged with this crime as a Class A Misdemeanor because the value of the service exceeded \$100, add:

and

3. That the value of such service exceeded one hundred dollars (\$100).]⁹

⁹If cable television service is involved, the defendant is charged with this crime as a Class A Misdemeanor on the basis of a prior conviction, and the defendant admitted the prior conviction, then list *only* the first two elements for the jury.

If the prior conviction element is applicable and the defendant has denied that element or remained mute, add the following:

"and 3. That the defendant had been previously convicted of theft of services under Penal Law § 165.15(4).

If you find the People have proven beyond a reasonable doubt (each / both) of those elements, you must find the defendant guilty of this crime.

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