IN THE CIRCUIT COURT OF [*county*] COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

v. [*case number*]

Hon. [*name*]

[*name-all caps*],

 Defendant.

DEFENDANT’S INSTRUCTION NO. \_\_\_\_

 Count \_\_ of the indictment charges the defendant with Intercepting or Monitoring Customer Telephone Calls.

 Intercepting or Monitoring Customer Telephone Calls occurs when a person, firm or corporation intercepts or monitors, or attempts to intercept or monitor, the transmission of a message, signal or other communication by telephone between an employee or similar agent of such person, firm, or corporation and a customer of such person, firm or corporation unless such person, firm or corporation does all of the following:

1. Notifies each employee or agent subject to interception or monitoring that their telephone messages are subject to interception or monitoring; and,

2. Provides telephone instruments for employee’s personal use which are not subject to intercepting or monitoring.

 To find the defendant guilty of Intercepting or Monitoring Customer Telephone Calls, the State must overcome the defendant’s presumption of innocence and prove beyond a reasonable doubt that:

1. the defendant,

2. on the \_\_ day of [insert month], [insert year],

3. in [insert county] County, West Virginia,

4. intercepted or monitored, or attempted to intercept or monitor,

5. the transmission of a message, signal or other communication

6. by telephone

7. between an employee or similar agent of such person, firm or corporation and a customer of such person, firm or corporation,

8. and such person, firm or corporation failed to do all of the following:

A. Notify each employee or agent subject to interception or monitoring that their telephone messages were subject to interception or monitoring; and,

B. Provide telephone instruments for employee’s personal use which were not subject to intercepting or monitoring.

 If, after impartially considering, weighing and comparing all the evidence (that of both the State and the defendant), you are convinced beyond a reasonable doubt of the truth of the charge as to each of these elements, you may find the defendant guilty as charged in Count \_\_ of the indictment. If you have a reasonable doubt of the truth of the charge as to any one or more of these elements, you shall find the defendant not guilty.

GIVEN:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

REFUSED:\_\_\_\_\_\_\_\_\_\_\_\_\_

MODIFIED:\_\_\_\_\_\_\_\_\_\_\_\_

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 JUDGE