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 Making, Selling, Possessing, Transferring or Advertising for Sale a Device or Plans for a Device Designed to Obtain or Use Telephone or Telegraph Service or Facilities by False or Fraudulent Means.

Making, Selling, Possessing, Transferring or Advertising for Sale a Device or Plans for a Device Designed to Obtain or Use Telephone or Telegraph Service or Facilities by False or Fraudulent Means occurs when a person knowingly makes, sells, offers or advertises for sale, possesses, or gives or otherwise transfers to another person any instrument, apparatus, equipment, or device, or plans or instructions for making or assembling any instrument, apparatus, equipment, or device which has been designed, adapted, used, or employed with the intent or for the purpose of (1) obtaining telephone or telegraph service or the transmission of a message, signal or other communication by telephone or telegraph, or over telephone or telegraph facilities without the payment of charges for it, or (2) concealing or assisting another to conceal from any supplier of telephone or telegraph service or from any person charged with the responsibility of enforcing this section, the existence or place of origin or of destination of any message, signal, or other communication by telephone or telegraph, or over telephone or telegraph facilities.

To find the defendant guilty of Making, Selling, Possessing, Transferring or Advertising for Sale a Device, or Plans for a Device, Designed to Obtain or Use Telephone or Telegraph Service or Facilities by False or Fraudulent Means, the State must overcome the defendant’s presumption of innocence and prove beyond a reasonable doubt that:

1. the defendant,

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

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

4. knowingly

5. made, sold, offered or advertised for sale, possessed, gave, or otherwise transferred to another person

6. any [instrument, apparatus, equipment, or device] [plans or instructions for making or assembling any instrument, apparatus, equipment, or device]

7. which has been designed, adapted, used, or employed

8. with the intent or for the purpose of

A. obtaining telephone or telegraph service or the transmission of a message, signal or other communication by telephone or telegraph, or over telephone or telegraph facilities without the payment of charges for it, or

B. concealing or assisting another to conceal from a supplier of telephone or telegraph service or from a person charged with the responsibility of enforcing this section, the existence or place of origin or of destination of any message, signal, or other communication by telephone or telegraph, or over telephone or telegraph facilities.

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:\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

JUDGE