



# ***Exploding The Phone***

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Bibliographic Cover Sheet

Title	<b>FCC memo regarding proposed statute drafted by communications common carriers concerning the obtaining of communication service by fraud</b>
Date	1965-05-14
Author(s)	Geller, Henry; Strassburg, Bernard (FCC)
Abstract	Memorandum from Henry Geller, general counsel, and Bernard Strassburg, chief, Common Carrier Bureau, Federal Communications Commission to the Commission regarding a proposed statute drafted by communications common carriers concerning the obtaining of communication service by fraud. Consists of a two page cover memo, a one-page draft letter to the Department of Justice, a one-page proposed statute prescribing the fraudulent obtaining of telecommunications service (Exhibit A), and a seven page memorandum from Donald F. Clark, attorney, American Telephone and Telegraph Company dated April 27, 1965 answering questions put forth by FCC staff members Mr. Leshner and Mr. Ohlbaum.
Keywords	Federal Communications Commission; FCC; AT&T; blue box; black box; toll fraud; Henry Geller; Bernard Strassburg
Notes	The proposed letter number 67749 two the Department of Justice was not approved; a revised letter was approved, see db482.

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FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C.

67748

May 14, 1965

INTEROFFICE MEMORANDUM

FOR: General Agenda\*\*

TO: The Commission

FROM: General Counsel and Chief, Common Carrier Bureau

SUBJECT: Proposed statute drafted by communications common carriers  
concerning the obtaining of communications service by fraud.

RECOMMENDED ACTION: Approve attached letter to the Department of  
Justice indicating support for legislation  
imposing criminal sanctions on the making, using  
possessing, selling or advertising of any device  
for the purpose of obtaining communications  
service by fraud.

1. Representatives of American Telephone and Telegraph Company have discussed with the Commission's staff as well as the Department of Justice a proposed statute which would make it a criminal offense to obtain communications service by fraud, or to make, possess, sell, or advertise any device for the purpose of obtaining communications service by fraud. A copy of the proposal submitted by the telephone company representatives is attached hereto as Exhibit A.

2. The genesis of the proposed legislation is the development of devices which either connect to a called telephone and cause a no-charge condition on long-distance or local calls (the "black box"), or send out signals over the telephone system in connection with the placement of a call, so that it will not register on the telephone company billing equipment (the "blue box"). In addition, a so-called "cheese box" has been developed which is connected with two telephone lines so that a call may be made from one line to the other without anyone being present at the "cheese box" location, and, frequently, with no record of the call being made. Finally, the telephone company has been concerned with the fraudulent use of credit cards. The telephone company estimates a yearly loss of something over \$3,000,000. It also points out that these schemes are frequently used by persons

Item No. 5  
For General Agenda  
Commission Action  
May 26, 1965

Passed over for revised  
letter.  
6-9: letter NOT adopted.

engaged in criminal activities. Attached hereto as Exhibit B is a memorandum furnished by the telephone company in response to a request by the staff. An earlier memorandum, similar in content, was previously submitted.

3. Informal discussion with the Chief of the Fraud Section of the Criminal Division of the Department of Justice indicates lack of enthusiasm for the proposal on the ground that it would tend to make the Department a collection agency for selected instances brought to them by the telephone company. However, there has apparently been more interest in the legislation on the part of the Organized Crime Section of the Department. The staff recommends that the Commission not endorse this proposed legislation as now drafted but that it indicate support for legislation that will be directed to physical devices used or intended for use in obtaining communications service by fraud. As now worded, the proposed legislation has too broad a sweep. It would attempt to outlaw not only such physical devices but would purport to outlaw all other actions by ordinary users of the service that might conceivably be construed as a trick, scheme or false or fraudulent representation, pretense or credit device to avoid payment of the "regular" charge.

4. Although the impact of the use of the physical devices to defraud the carriers of their lawful charges may not, at the moment, be such as to warrant affirmative action by the Commission in urging new federal criminal legislation, the staff is nevertheless concerned with the fact that the revenue impact seems to be growing and there is a danger of the proliferation of the manufacture, sale and use of these devices in the absence of an adequate federal statute. The present federal criminal statute on fraud by wire, radio or television (18 U.S.C. 1343) appears inadequate because of its limited application. Moreover, existing state laws which presently outlaw all of these practices may not be sufficient to deal effectively with this problem on a nationwide basis.

5. There is attached hereto a draft of a proposed letter to the Criminal Division of the Department of Justice supporting in a general way further legislation that would impose criminal sanctions on the making, possessing, selling or advertising of any physical device intended to be used for obtaining communications service by fraud.

*Henry Geller*

Henry Geller  
General Counsel

*Bernard Strassburg*

Bernard Strassburg  
Chief, Common Carrier Bureau

Attach.

DROhlbaum: KEGriffith:mf  
JEC

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

20554

FCC65-  
67749

IN REPLY REFER TO:

Mr. Fred M. Vinson, Jr.  
Assistant Attorney General  
Criminal Division  
Department of Justice  
Washington, D.C. 20530

Dear Mr. Vinson:

The American Telephone and Telegraph Company has brought to our attention the problem it and other communications common carriers have had with the increasing use of electronic and other devices to obtain communications service by fraudulent means. It appears that in addition to the fraudulent use of credit cards, devices have been developed which either attach to a called telephone to prevent the recording of incoming local and long-distance calls, or are used to send out signals in connection with the placing of a call to prevent any registration of the call on telephone company equipment. It further appears that use of these devices not only is causing an increasing loss of revenue, but has also proved to be an aid to persons engaged in criminal activities.

We understand that the Department of Justice has had discussions with the telephone company concerning this problem, and that the telephone company has drafted proposed legislation. We recognize, of course, that the Department of Justice would be primarily responsible for administering any new federal criminal statute which might be enacted to deal with the problem of obtaining communications service fraudulently. However, it does seem to us that there is a growing problem which, if it cannot be adequately dealt with on the local level, warrants serious consideration at the national level.

We are particularly of the view that consideration should be given to federal legislation which would impose criminal sanctions on the use of physical devices to obtain communications service by fraud, or the making, possessing, selling or advertising of any physical device with knowledge or reason to believe that such device is intended to be used in obtaining communications service by fraud. If the Department of Justice believes that such new legislation is warranted, the Commission would be happy to cooperate in any way which would be helpful.

This letter was adopted on the \_\_\_\_\_ day of May, 1965.

BY DIRECTION OF THE COMMISSION

E. William Henry  
Chairman



Proposed Statute Proscribing  
the Fraudulent Obtaining of  
Telecommunications Service

It is respectfully urged that a new section be added to "Title V - Penal Provisions" of the Communications Act of 1934, As Amended, to read as follows:

TITLE V - Penal Provisions - Forfeitures

Obtaining Communications Service By Fraudulent Means,  
and so forth; Effect of State Judgment

Sec. 511. Any person, including, but not limited to, an agent or employee of any carrier, as defined in Section 3(h) of this Act, who willfully and knowingly obtains, or attempts to obtain, or assists another to obtain or to attempt to obtain, any communications service from any such carrier, by rearranging, tampering with, or making electrical, accoustical or other connection with any facilities or equipment of any such carrier, or by any trick, scheme, or false or fraudulent representation, pretense or credit device, or by or through any other fraudulent means or device whatsoever, with intent to avoid, or to assist another to avoid, the payment, in whole or in part, of the regular charge for such service, or with intent to conceal, or to assist another to conceal, from any such carrier or from any lawful authority the existence or place of origin or of destination of any communications; or any person, including, but not limited to, an agent or employee of any such carrier, who makes or possesses any instrument, apparatus, or device, or who sells, gives, or otherwise transfers to another, or offers or advertises for sale, any instrument, apparatus, device, or information, with knowledge or reason to believe that it is intended to be used to obtain any communications service from any such carrier by any of the aforesaid means, or with the representation, express or implied, that it may lawfully be so used, shall, upon conviction thereof, be punished for such offense in accordance with the penalties set forth in section 501 of this Act.

A judgment of conviction or acquittal on the merits under the laws of any State, or the District of Columbia, shall be a bar to any prosecution under this section for the same act or acts.



MEMORANDUM for Mr. Leshner and Mr. Ohlbaum of the FCC:

At our meeting on April 19, 1965, concerning the telephone industry's proposed statute which would proscribe the fraudulent obtaining of telecommunications service, etc., you requested certain additional information, which I am pleased to submit as follows:

(1) Do any existing Federal statutes proscribe the conduct which would be proscribed by the proposed statute?

(A)

As to the first half of the first paragraph of the proposed statute, which deals with "[a]ny person . . . who willfully and knowingly obtains . . . communications service . . . by [various] means . . . with intent to avoid . . . payment [etc.]":

It would appear that existing Federal statutes do not proscribe most of the various means currently employed to fraudulently obtain communications service.

It may be argued that 47 U.S.C. §§ 501 and 202(a) and/or 203(c) proscribe most, if not all, such fraud; that is, that one who makes a fraudulent credit card, or "blue box", telephone call, for example, "willfully and knowingly . . . causes" a "carrier [to] charge, . . . or receive a . . . less . . . compensation, for such communication. . . . than the charges specified in the [tariff] schedule". Research in depth of the legislative history of the Communications Act of 1934, as amended convinces me that Congress did not intend the conduct of persons other than carriers and employees and agents of carriers to be proscribed by § 501 when applied to §§ 202(a) or 203(c). To state it another way, I am convinced that the Communications Act contains no counterpart to 49 U.S.C. § 10(3), which latter penalizes rail shippers who fraudulently "obtain transportation for . . . property at less than the regular rates", even though the Communications Act borrowed extensively from the Interstate Commerce Act.

Nor do the implications of Marcus v. U.S., 310 F.2d 143 (3d Cir. 1962), U.S. v. Testa, 326 F.2d 730 (3d Cir. 1964), and U.S. v. Harris, 334 F.2d 460, 463 (2d Cir. 1964), dissuade me from this opinion. In none of these cases does the court categorically agree with the theory, there proffered by the government, in order to use the immunity provision of 47 U.S.C.



§ 409(1), that an individual who uses telephone facilities "for an unlawful purpose", where the tariff says the service shall not be so used, thereby causes the carrier to extend to him services not provided for in its tariffs, and, hence, violates 47 U.S.C. §§ 203(c) and 501. The court in Harris went no further than to say: ". . . the use of telephone facilities on a large scale in the promotion of unlawful enterprises, and corruption in connection therewith, . . . would certainly constitute a violation of the Communications Act, at least to the extent of any participation by telephone company representatives." (Emphasis supplied.) This comports with my conclusion, from the legislative history, that § 501 when applied to § 203(c) was not intended to proscribe the conduct of persons other than carriers and employees and agents of carriers.

Nor can it plausibly be argued that most - if, indeed, any - of the means of fraudulently obtaining communications service fit the intent of 47 U.S.C. § 503(a).

It may be argued that 18 U.S.C. § 1343 ("fraud by wire, radio, or television") proscribes the types of fraud in question.

(1) Messrs. Nathaniel Kossack and Henry Petersen, attorneys in the Justice Department, indicated to me, in February 1964, that the Department would be willing to prosecute select "blue box" (see description below) fraud cases under § 1343; (2) there has been a conviction under § 1343 for telephone credit card fraud (U.S. v. Robbins, No. 31907 - Criminal, U.S. Dist. Ct. for the Southern Dist. of Cal., Central Div. (1963)); and (3) there has been a conviction under § 1343 for obtaining long distance telephone connections by posing as a telephone company testman (U.S. v. Greenspan, Cr. No. 11,850, U.S. Dist. Ct. for the Dist. of Hawaii (1963)). The following must be added, however:

(1) Mr. Kossack, who had a hand in drafting § 1343, expressed doubt that it was intended to apply where the victim of the fraud was the supplier of the means of communication, as distinguished from the recipient of the communication. He seemed unwilling to attempt to use § 1343 against the fraudulent obtaining of communications service generally, and agreed to select "blue box" fraud prosecutions because Mr. Petersen indicated an interest in this type of fraud, on behalf of the Organized Crime and Racketeering Section. Because in "blue box" fraud the defrauder presses keys which transmit "signals" by "interstate wire" in order to execute his "artifice to defraud" the telephone company, it is my opinion that § 1343 would ultimately be held applicable to "blue box" fraud.



(2) The Robbins credit card fraud conviction was obtained on a guilty plea, and the applicability of § 1343 was not contested. Because telephone credit card fraud is accomplished by the calling party making a misrepresentation to a telephone operator who, with rare exception, is located in the same state as the calling party, it is my opinion that § 1343 - with its "by means of interstate wire" limitation - is not applicable.

(3) In Greensoan the defendant, in interstate telephone conversations with telephone company employees, posed as a long distance testman and thereby had them establish connections for him until he reached the outside party with whom he wished to converse. This type of fraud would seem to fit the language of § 1343, but its incidence is rare.

In sum, § 1343 may apply to "blue box" and "posing-as-testman" types of telephone service fraud, but it is very doubtful that it applies to the more troublesome "black box", "cheesebox" (see descriptions below), "credit card", "third number billing" and other types of communications service fraud. Moreover, § 1343 is limited to interstate calls, whereas the "cheesebox", for example, is used principally - and in some cases exclusively - in connection with intrastate calls.

(B)

As to the latter half of the first paragraph of the proposed statute, which deals with "any person . . . who makes or possesses any instrument, [etc.]":

It would appear that no existing Federal statute proscribes said conduct, and there has been no Federal prosecution for said conduct.

In 1964 a telephone company sought prosecution under 18 U.S.C. § 1341 (mail fraud) of a person who had mailed a "blue box" from California to Texas, but the U.S. Attorney's office for the Southern District of Cal. was not receptive. Moreover, mailing of the devices described in the proposed statute rarely occurs, and is but a small fraction of the conduct which would be proscribed by the proposed statute.

The U.S. mails have been used to disseminate plans and instructions for making the "blue box", and to disseminate advertisements for the sale of said plans and instructions; but Mr. Nathaniel Kossack, attorney in the Justice Department, informed me in February 1964 that 18 U.S.C. § 1341 was



inapplicable to such conduct, citing Stockton v. U.S., 205 Fed. 462 (7th Cir. 1913), and an attempt to get Federal prosecution in southern California, of a person who so used the mails came to naught. Moreover, mailing said plans and instructions, or advertisements therefor, is not the only means of disseminating them.

(2) The need for the "makes or possesses any instrument, [etc.]" portion of the proposed statute:

Within recent years unscrupulous persons have used electronic devices which cause dialed telephone calls not to be registered by the telephone companies' automatic billing equipment.

These devices are of at least three varieties: (1) the "black box", (2) the "blue box", and (3) the "cheesebox", each so called because the first such device discovered was enclosed in a box of that color or character.

(1) The "black box" is connected to the called telephone and causes a no-record and no-charge condition for any telephone call - local or long distance - that is dialed to that number. It is a silent "parasite" which does not transmit any signals or sounds by means of interstate wire. It is very attractive to gamblers, and others who wish to avoid telephone "tracks", as well as to those whose sole purpose is to have others call them "free".

(2) The "blue box" is used by the caller in conjunction with his telephone instrument to make calls to anywhere in the country so as to by-pass telephone company billing equipment - thus making no record of the call.

(3) The "cheesebox" is connected to two telephone lines at a point where they both terminate and it permits a person calling in on one line to talk with a person calling in on the other line without anyone being present at the "cheesebox" location. To illustrate: A "bookie" rents a room and has two main telephone services installed. He then installs the "cheesebox" in place of the two telephone instruments, so that the two separate telephone lines which terminated, respectively, in these instruments now interconnect inside the "cheesebox". At, say, 11 A.M. the "bookie", at his home five miles away, dials one of these two telephone lines and reaches the "cheesebox". Potential bettors, who have been given the number of the other



telephone line and told to call after 11 A.M., now dial that number and reach the bookie. The "cheesebox", the "bookie" and the bettor may be at three different locations within the same city or anywhere in the country. When the police raid the "gambling premises", there is nothing there but the "cheesebox". Most "cheeseboxes" discovered to date cause a no-record, no-charge condition for each telephone call to the "cheesebox"; but others do not, and for some local calls there is no tariff charge for each call - hence, the necessity for the "with intent to conceal, [etc.]" clause in the proposed statute.

These three electronic devices serve no legitimate purpose. They are designed solely to evade the lawful charges and/or records of telephone companies.

The use of such devices is a crime in virtually all of the states. But, despite this fact, their known use has spread and increased alarmingly in recent years in the United States, and even more use of them probably has gone undetected.

A criminal sanction is needed which gets at the source of this fraud, namely, the clandestine manufacture and sale of these devices, which are now carried on with impunity.

For example, in 1961 a black box "factory" was discovered in Westchester County, New York, allegedly financed by "bookmakers", wherein had been made 100 "black boxes", 15 of which were seized in a raid on a local gambler's establishment. See pages 34-38 of Report No. 1310 of the U.S. Senate Committee on Government Operations, dated March 28, 1962. The Committee concluded, at p. 47: "The so-called parasite device [i.e., "black box"] would be an invaluable weapon in the hands of gamblers . . . . The extreme interest of professional gamblers in this device was clearly established by the evidence before the subcommittee. The subcommittee therefore recommends that Congress consider whether the penal provisions of the Federal Communications Act of 1934 should be amended by adding criminal penalties for the unauthorized attachment of foreign devices to telephone equipment or facilities".

Again, in 1964 it was discovered that an electronics manufacturer in Maryland, whose legitimate business became slack, turned to making "cheeseboxes". Thirty-eight had been made - ten of which had already been sold to "bookies" - before the operation was discovered.

There is much evidence that many others elsewhere in the country are making such devices. Moreover, their use is not confined to the place of manufacture: recently a "blue



box" made in New York was sold in Pennsylvania, another made in California was sold in Texas, and a "black box" made in Florida was sold in New Jersey.

Equally disturbing is the sale, or other distribution, of plans and instructions for making these fraudulent devices.

Thus, in 1963 the following ad appeared in newspapers in California, Ohio, Florida, and the District of Columbia:

Slash Communication  
Costs  
with  
TELA-TONE  
You've been reading about it.  
Now you can build it yourself.  
No license required to operate,  
5,000 mile range. Complete  
details \$5 or money back. Tela-  
Tone, Box 4304, Pasadena, Calif.

A representative of the advertiser demonstrated a "blue box" on a Los Angeles and, subsequently, a nationwide television program.

Again, a different person advertised "blue box" plans as follows in the January, February, and March 1964 issues of "Popular Electronics" magazine, which has nationwide distribution:

TOLL Free Distance Dialing. By-passes operators and billing equipment. Build for \$15.00. . . . Plans \$4.75. Seaway Electronics, 6311 Yucca St., Hollywood 28, California.

The advertiser has admitted that about 149 copies of these plans were mailed out. He increased the price of the plans to \$7.50 and bulk-mailed at least 8,950 copies of the attached "kangaroo" ad, mostly to amateur radio operators in New York, New Hampshire, Vermont, New Jersey, Massachusetts, Connecticut, and California.

Other sales and advertisements of plans for these fraudulent electronic devices recently have appeared or been discovered.



This portion of the proposed statute is analogous to, and the "electronic age" updating of, - 18 U.S.C. § 1491(b), which penalizes one who "manufactures, sells, offers, or advertises for sale . . . any token, slug, [etc.] . . . with knowledge or reason to believe that such . . . are intended to be used unlawfully . . . to procure . . . the use . . . of any . . . service from any . . . coin-box telephone [etc.] . . . ."

Donald F. Clarke  
Attorney  
American Telephone and Telegraph Company

Attachment

April 27, 1965