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July 20, 2009

VIA E-MAIL + FAX

Lindsay C. Blanton III
The RadioReference.com
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210-824-7099 FAX

**Re: Notice of Multiple Violations of 47 U.S.C. § 605 &
Demand for Immediate Cessation of Violations**

Dear Mr. Blanton:

This responds to your e-mail of Thursday, July 16, 2009, which, in turn, responded to my letter to you dated July 15, 2009 regarding this matter, and confirms what I said to you on the telephone this morning. In your e-mail, you contend that your divulgence and publication of the confidential and private information of MRA and its customers is not a violation of federal criminal law, because, according to your e-mail, anything which is not illegal under 18 U.S.C. chapter 119 ("Federal Wiretap Laws"), is automatically also not illegal under Section 705 of the Communications Act of 1934 as amended, 47 U.S.C. § 605 ("Act"). In particular, you referenced 18 U.S.C. § 2511(2)(g), as rendering your actions legal, notwithstanding the Act.

I have looked at the Federal Wiretap Laws in their entirety, and I find your argument without merit. You looked at subsection (2)(g) of Section 2511 in isolation, and you did not look at the various Public Laws that were passed by Congress before they were codified into the U.S.C., and so you came to a mistaken conclusion. The words, "Except as authorized by chapter 119, title 18, United States Code," at the beginning of Section 705 of the Act, came in as conforming language after the Foreign Intelligence Surveillance Act of 1978 ("FISA") was enacted. They were added to Section 705, because FISA added two new subsections to 18 U.S.C. § 2511(2) to make certain government counterespionage actions legal. Those two subsections are now codified as 18 U.S.C. § 2511(2)(e) & (f), and each of those two subsections specifically mentions Section 705 of the Act, and says that Section 705 does not apply to government actions under subsections (e) or (f) of Section 2511(2). (For your convenience, I am enclosing a copy of the entire text of Section 2511, so you can see the whole thing in context.)

Unlike subsections (e) and (f) of Section 2511(2), subsection (g) of Section 2511(2) makes no mention of Section 705 of the Act. Subsection (g) simply does not fall within the scope of the words, "Except as authorized by chapter 119, title 18, United States Code". Actions which violate Section 705 of the Act remain criminal violations, whether or not those activities

also violate 18 U.S.C. § 2511(2)(g). No lawyer or judge, reviewing the entire law, as opposed to an out-of-context portion, would conclude otherwise.

Even if, for the sake of argument, subsection (g) were presumed to be within the scope of the "Except as" language, it would not help radioreference.com here. On its face, subsection (g) only says it is legal to "intercept" certain radio communications; it does not say it is legal to intercept *and then divulge or publish* the intercepted information to any person. Section 705 prohibits someone who intercepts a communication from so divulging or publishing the intercepted information, and nothing in Section 2511(2)(g) makes such divulging or publishing legal.

As I indicated in the previous letter, MRA's concern here was prompted by the fact that MRA's customers are now being harassed by unknown persons who are using the codes to transmit to customers' vehicular units and interfere with the lawful transmissions of the customers' own dispatchers and other units. We are not asking you to stop divulging and publishing the codes or the correlation between frequencies and channel numbers just to make your life difficult. MRA does not care what reason you give to third person as to why you stopped divulging and publishing its customer codes and the channelization scheme. (Nor, for that matter, do we care what policy you follow for other companies, so long as it does not affect us and we can resolve this matter immediately.) But you must not divulge or publish the MRA information going forward.

MRA therefore requests that you confirm that you will permanently refrain from divulging or publishing MRA's and its customers' confidential and proprietary information.

Thank you.

Sincerely,



David J. Kaufman

Enclosure (statute)

cc: Mobile Relay Associates

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LEXSTAT 18 USC 2511

UNITED STATES CODE SERVICE
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*** CURRENT THROUGH PL 111-40, APPROVED 07/01/2009 ***

TITLE 18. CRIMES AND CRIMINAL PROCEDURE
 PART I. CRIMES
 CHAPTER 119. WIRE AND ELECTRONIC COMMUNICATIONS INTERCEPTION AND INTERCEPTION OF
 ORAL COMMUNICATIONS

Go to the United States Code Service Archive Directory

18 USCS § 2511

Review expert commentary from The National Institute for Trial Advocacy preceding 18 USCS § 2510 (relating to video surveillance).

Review expert commentary from The National Institute for Trial Advocacy following 18 USCS § 2516 (relating to wire and electronic communications).

§ 2511. Interception and disclosure of wire, oral, or electronic communications prohibited [Caution: See prospective amendment note below.]

- (1) Except as otherwise specifically provided in this chapter [*18 USCS §§ 2510 et seq.*] any person who--
- (a) intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire, oral, or electronic communication;
 - (b) intentionally uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when--
 - (i) such device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication; or
 - (ii) such device transmits communications by radio, or interferes with the transmission of such communication; or
 - (iii) such person knows, or has reason to know, that such device or any component thereof has been sent through the mail or transported in interstate or foreign commerce; or
 - (iv) such use or endeavor to use (A) takes place on the premises of any business or other commercial establishment the operations of which affect interstate or foreign commerce; or (B) obtains or is for the purpose of obtaining information relating to the operations of any business or other commercial establishment the operations of which affect interstate or foreign commerce; or
 - (v) such person acts in the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States;
 - (c) intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection;
 - (d) intentionally uses, or endeavors to use, the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection; or
 - (e) (i) intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, intercepted by means authorized by sections 2511(2)(a)(ii), 2511(2)(b)-(c), 2511(2)(e), 2516, and 2518 of this chapter [*18 USCS §§ 2511(2)(a)(ii), 2511(2)(b)-(c), 2511(2)(e), 2516, and 2518*], (ii) knowing or having reason

to know that the information was obtained through the interception of such a communication in connection with a criminal investigation, (iii) having obtained or received the information in connection with a criminal investigation, and (iv) with intent to improperly obstruct, impede, or interfere with a duly authorized criminal investigation,

shall be punished as provided in subsection (4) or shall be subject to suit as provided in subsection (5).

(2)

(a) (i) It shall not be unlawful under this chapter [18 USCS §§ 2510 et seq.] for an operator of a switchboard, or an officer, employee, or agent of a provider of wire or electronic communication service, whose facilities are used in the transmission of a wire or electronic communication, to intercept, disclose, or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service or to the protection of the rights or property of the provider of that service, except that a provider of wire communication service to the public shall not utilize service observing or random monitoring except for mechanical or service quality control checks.

(ii) Notwithstanding any other law, providers of wire or electronic communication service, their officers, employees, and agents, landlords, custodians, or other persons, are authorized to provide information, facilities, or technical assistance to persons authorized by law to intercept wire, oral, or electronic communications or to conduct electronic surveillance, as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 [50 USCS § 1801] if such provider, its officers, employees, or agents, landlord, custodian, or other specified person, has been provided with--

(A) a court order directing such assistance or a court order pursuant to section 704 of the Foreign Intelligence Surveillance Act of 1978 [50 USCS § 1881c] signed by the authorizing judge, or

(B) a certification in writing by a person specified in section 2518(7) of this title [18 USCS § 2518(7)] or the Attorney General of the United States that no warrant or court order is required by law, that all statutory requirements have been met, and that the specified assistance is required,

setting forth the period of time during which the provision of the information, facilities, or technical assistance is authorized and specifying the information, facilities, or technical assistance required. No provider of wire or electronic communication service, officer, employee, or agent thereof, or landlord, custodian, or other specified person shall disclose the existence of any interception or surveillance or the device used to accomplish the interception or surveillance with respect to which the person has been furnished an order or certification under this subparagraph, except as may otherwise be required by legal process and then only after prior notification to the Attorney General or to the principal prosecuting attorney of a State or any political subdivision of a State, as may be appropriate. Any such disclosure, shall render such person liable for the civil damages provided for in section 2520 [18 USCS § 2520]. No cause of action shall lie in any court against any provider of wire or electronic communication service, its officers, employees, or agents, landlord, custodian, or other specified person for providing information, facilities, or assistance in accordance with the terms of a court order, statutory authorization, or certification under this chapter [18 USCS §§ 2510 et seq.].

(iii) If a certification under subparagraph (ii)(B) for assistance to obtain foreign intelligence information is based on statutory authority, the certification shall identify the specific statutory provision and shall certify that the statutory requirements have been met.

(b) It shall not be unlawful under this chapter [18 USCS §§ 2510 et seq.] for an officer, employee, or agent of the Federal Communications Commission, in the normal course of his employment and in discharge of the monitoring responsibilities exercised by the Commission in the enforcement of chapter 5 of title 47 [47 USCS §§ 151 et seq.] of the United States Code, to intercept a wire or electronic communication, or oral communication transmitted by radio, or to disclose or use the information thereby obtained.

(c) It shall not be unlawful under this chapter [18 USCS §§ 2510 et seq.] for a person acting under color of law to intercept a wire, oral, or electronic communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception.

(d) It shall not be unlawful under this chapter [18 USCS §§ 2510 et seq.] for a person not acting under color of law to intercept a wire, oral, or electronic communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any State.

(e) Notwithstanding any other provision of this title or section 705 or 706 of the Communications Act of 1934 [47 USCS § 605 or 606], it shall not be unlawful for an officer, employee, or agent of the United States in the normal course of his official duty to conduct electronic surveillance, as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 [50 USCS § 1801], as authorized by that Act [50 USCS §§ 1801 et seq.].

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(f) Nothing contained in this chapter or chapter 121 or 206 of this *title* [18 USCS §§ 2510 et seq., or 2701 et seq., or 3121 et seq.], or *section* 705 of the Communications Act of 1934 [47 USCS § 605], shall be deemed to affect the acquisition by the United States Government of foreign intelligence information from international or foreign communications, or foreign intelligence activities conducted in accordance with otherwise applicable Federal law involving a foreign electronic communications system, utilizing a means other than electronic surveillance as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 [50 USCS § 1801], and procedures in this chapter or chapter 121 or 206 of this *title* [18 USCS §§ 2510 et seq., or 2701 et seq., or 3121 et seq.] and the Foreign Intelligence Surveillance Act of 1978 [50 USCS §§ 1801 et seq.] shall be the exclusive means by which electronic surveillance, as defined in section 101 of such Act [50 USCS § 1801], and the interception of domestic wire, oral, and electronic communications may be conducted.

(g) It shall not be unlawful under this chapter [18 USCS §§ 2510 et seq.] or chapter 121 of this *title* [18 USCS §§ 2701 et seq.] for any person--

(i) to intercept or access an electronic communication made through an electronic communication system that is configured so that such electronic communication is readily accessible to the general public;

(ii) to intercept any radio communication which is transmitted--

(I) by any station for the use of the general public, or that relates to ships, aircraft, vehicles, or persons in distress;

(II) by any governmental, law enforcement, civil defense, private land mobile, or public safety communications system, including police and fire, readily accessible to the general public;

(III) by a station operating on an authorized frequency within the bands allocated to the amateur, citizens band, or general mobile radio services; or

(IV) by any marine or aeronautical communications system;

(iii) to engage in any conduct which--

(I) is prohibited by section 633 of the Communications Act of 1934 [47 USCS § 553]; or

(II) is excepted from the application of section 705(a) of the Communications Act of 1934 [47 USCS § 605(a)] by section 705(b) of that Act [47 USCS § 605(b)];

(iv) to intercept any wire or electronic communication the transmission of which is causing harmful interference to any lawfully operating station or consumer electronic equipment, to the extent necessary to identify the source of such interference; or

(v) for other users of the same frequency to intercept any radio communication made through a system that utilizes frequencies monitored by individuals engaged in the provision or the use of such system, if such communication is not scrambled or encrypted.

(h) It shall not be unlawful under this chapter [18 USCS §§ 2510 et seq.]--

(i) to use a pen register or a trap and trace device (as those terms are defined for the purposes of chapter 206 (relating to pen registers and trap and trace devices) of this *title*) [18 USCS §§ 3121 et seq.]; or

(ii) for a provider of electronic communication service to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire or electronic communication, or a user of that service, from fraudulent, unlawful or abusive use of such service.

(i) It shall not be unlawful under this chapter [18 USCS §§ 2510 et seq.] for a person acting under color of law to intercept the wire or electronic communications of a computer trespasser transmitted to, through, or from the protected computer, if--

(I) the owner or operator of the protected computer authorizes the interception of the computer trespasser's communications on the protected computer;

(II) the person acting under color of law is lawfully engaged in an investigation;

(III) the person acting under color of law has reasonable grounds to believe that the contents of the computer trespasser's communications will be relevant to the investigation; and

(IV) such interception does not acquire communications other than those transmitted to or from the computer trespasser.

(3)

(a) Except as provided in paragraph (b) of this subsection, a person or entity providing an electronic communication service to the public shall not intentionally divulge the contents of any communication (other than one to such person or entity, or an agent thereof) while in transmission on that service to any person or entity other than an addressee or intended recipient of such communication or an agent of such addressee or intended recipient.

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(b) A person or entity providing electronic communication service to the public may divulge the contents of any such communication--

- (i) as otherwise authorized in section 2511(2)(a) or 2517 of this title [18 USCS § 2511(2)(a) or 2517];
- (ii) with the lawful consent of the originator or any addressee or intended recipient of such communication;
- (iii) to a person employed or authorized, or whose facilities are used, to forward such communication to its destination; or

(iv) which were inadvertently obtained by the service provider and which appear to pertain to the commission of a crime, if such divulgence is made to a law enforcement agency.

(4) (a) Except as provided in paragraph (b) of this subsection or in subsection (5), whoever violates subsection (1) of this section shall be fined under this title or imprisoned not more than five years, or both.

(b) Conduct otherwise an offense under this subsection that consists of or relates to the interception of a satellite transmission that is not encrypted or scrambled and that is transmitted--

- (i) to a broadcasting station for purposes of retransmission to the general public; or
- (ii) as an audio subcarrier intended for redistribution to facilities open to the public, but not including data transmissions or telephone calls,

is not an offense under this subsection unless the conduct is for the purposes of direct or indirect commercial advantage or private financial gain.

(5) (a) (i) If the communication is--

(A) a private satellite video communication that is not scrambled or encrypted and the conduct in violation of this chapter [18 USCS §§ 2510 et seq.] is the private viewing of that communication and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain; or

(B) a radio communication that is transmitted on frequencies allocated under subpart D of part 74 of the rules of the Federal Communications Commission that is not scrambled or encrypted and the conduct in violation of this chapter [18 USCS §§ 2510 et seq.] is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain,

then the person who engages in such conduct shall be subject to suit by the Federal Government in a court of competent jurisdiction.

(ii) In an action under this subsection--

(A) if the violation of this chapter [18 USCS §§ 2510 et seq.] is a first offense for the person under paragraph (a) of subsection (4) and such person has not been found liable in a civil action under section 2520 of this title [18 USCS § 2520], the Federal Government shall be entitled to appropriate injunctive relief; and

(B) if the violation of this chapter [18 USCS §§ 2510 et seq.] is a second or subsequent offense under paragraph (a) of subsection (4) or such person has been found liable in any prior civil action under section 2520 [18 USCS § 2520], the person shall be subject to a mandatory \$ 500 civil fine.

(b) The court may use any means within its authority to enforce an injunction issued under paragraph (ii)(A), and shall impose a civil fine of not less than \$ 500 for each violation of such an injunction.

HISTORY:

(Added June 19, 1968, P.L. 90-351, Title III, § 802, 82 Stat. 213; July 29, 1970, P.L. 91-358, Title II, § 211(a), 84 Stat. 654; Oct. 25, 1978, P.L. 95-511, Title II, § 201(a)-(c), 92 Stat. 1796; Oct. 30, 1984, P.L. 98-549, § 6(b)(2), (3), 98 Stat. 2804; Oct. 21, 1986, P.L. 99-508, Title I, §§ 101(b), (c)(1), (5), (6), (d), (f)(1), 102, 100 Stat. 1848, 1853; Sept. 13, 1994, P.L. 103-322, Title XXXII, Subtitle I, § 320901, Title XXXIII, § 330016(1)(G), 108 Stat. 2123, 2147; Oct. 25, 1994, P.L. 103-414, Title II, §§ 202(b), 204, 205, 108 Stat. 4290, 4291; Oct. 11, 1996, P.L. 104-294, Title VI, § 604(b)(42), 110 Stat. 3509; Oct. 26, 2001, P.L. 107-56, Title II, §§ 204, 217(2), 115 Stat. 281, 291; Nov. 25, 2002, P.L. 107-296, Title II, Subtitle C, § 225(h)(2), (j)(1), 116 Stat. 2158.)

(As amended July 10, 2008, P.L. 110-261, Title I, §§ 101(c)(1), 102(c)(1), Title IV, § 403(b)(2)(C), 122 Stat. 2459, 2474.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prospective amendment:

Amendment of para. (2)(a)(ii)(A), effective Dec. 31, 2012. Act July 10, 2008, P.L. 110-261, Title IV, § 403(b)(2)(C), 122 Stat. 2474, provides that effective 12/31/2012, as provided by § 403(b)(2)(C) of such Act, which appears as a note to this section, except as provided in section 404 [50 USCS § 1801 note], *section 2511(2)(a)(ii)(A) of title 18, United States Code* [para. (2)(a)(ii)(A) of this section], is amended by striking 'or a court order pursuant to section 704 of the Foreign Intelligence Surveillance Act of 1978'.

Amendments:

1970. Act July 29, 1970 (effective on the first day of 7th calendar month which begins after 7/29/70, as provided by § 901(a) of said Act), in subsec. (2)(a), designated existing provisions as clause (i) and added clause (ii).

1978. Act Oct. 25, 1978, in subsec. (2), in para. (a), substituted subpara. (ii) for one which read: "(ii) It shall not be unlawful under this chapter for an officer, employee, or agent of any communication common carrier to provide information, facilities, or technical assistance to an investigative or law enforcement officer who, pursuant to this chapter, is authorized to intercept a wire or oral communication.", and added paras. (e) and (f); and deleted subsec. (3) which read: "(3) Nothing contained in this chapter or in section 605 of the Communications Act of 1934 (48 Stat. 1143; 47 USC 605) shall limit the constitutional power of the President to take such measures as he deems necessary to protect the Nation against actual or potential attack or other hostile acts of a foreign power, to obtain foreign intelligence information deemed essential to the security of the United States, or to protect national security information against foreign intelligence activities. Nor shall anything contained in this chapter be deemed to limit the constitutional power of the President to take such measures as he deems necessary to protect the United States against the overthrow of the Government by force or other unlawful means, or against any other clear and present danger to the structure or existence of the Government. The contents of any wire or oral communication intercepted by authority of the President in the exercise of the foregoing powers may be received in evidence in any trial hearing, or other proceeding only where such interception was reasonable, and shall not be otherwise used or disclosed except as is necessary to implement that power."

1984. Act Oct. 30, 1984 (effective 60 days after enactment on 10/30/84 as provided by § 9(a) of such Act which appears as 47 USCS § 521 note), in subsec. (2), in para. (e), substituted "705 or 706" for "605 or 606", and, in para. (f), substituted "705" for "605".

1986. Act Oct. 21, 1986 (effective and applicable as provided by § 111 of such Act, which appears as 18 USCS § 2510 note), in the section heading, substituted "wire, oral, or electronic" for "wire or oral"; in subsec. (1), in para. (a), substituted "intentionally" for "willfully" and substituted "wire, oral, or electronic" for "wire or oral", in para. (b), substituted "intentionally" for "willfully", in paras. (c) and (d), substituted "intentionally" for "willfully" and "wire, oral, or electronic" for "wire or oral" respectively, and in the concluding matter, substituted shall be punished as provided in subsection (4) or shall be subject to suit as provided in subsection (5) for "shall be fined not more than \$ 10,000 or imprisoned not more than five years, or both"; in subsec. (2), in para. (a), in subpara. (i), substituted "a provider of wire or electronic communication service" for "any communication common carrier", "of the provider of that service" for "of the carrier of such communication", ", except that a provider of wire communication service to the public" for ": *Provided*, That said communication common carriers", in subpara. (ii), substituted "providers of wire or electronic communication service" for "communication common carriers", "wire, oral, or electronic" for "wire or oral", and "if such provider" for "if the common carrier", and in the concluding matter, substituted "provider of wire or electronic communication service" for "communication common carrier" each place it appears, "such disclosure" for "violation of this subparagraph by a communication common carrier or an officer, employee, or agent thereof", "such person" for "the carrier", and "a court order or certification under this chapter" for "an order or certification under this subparagraph", in para. (b), inserted "or electronic", in para. (c), substituted "wire, oral, or electronic" for "wire or oral", in para. (d), deleted "or for the purpose of committing any other injurious act" following "or of any State", in para. (f), inserted "or chapter 121" in two places, and substituted ", or foreign intelligence activities conducted in accordance with otherwise