

14.6 Unauthorized Possession of A Communications Device

§ 812.15(4)(a)-(c), Fla. Stat.

To prove the crime of Unauthorized Possession of a Communications Device, the State must prove the following four elements beyond a reasonable doubt:

- 1. (Defendant) intentionally possessed a communications device.**
- 2. (Defendant) did not have the express authorization of the cable operator or other communications service provider to possess such a device.**
- 3. (Defendant) knew or had reason to know that the design of such device rendered it primarily useful [for assisting others] to willfully intercept, receive, decrypt, disrupt, transmit, retransmit, or acquire access to any communications service.**
- 4. (Defendant) intentionally possessed the communications device with the intent to defraud the cable operator or communications service provider.**

If you find the defendant guilty of Unauthorized Possession of a Communications Device, you must determine beyond a reasonable doubt whether the defendant possessed:

Give a, b, or c as applicable.

- a. Less than five communications devices.**
- b. Five or more communications devices, but less than fifty.**
- c. Fifty or more communications devices.**

Possession.

To prove that a person “possessed” a communications device, the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the communications device; and b) intentionally exercised control over it.

Give if applicable.

Control can be exercised over a communications device whether it is carried on a person, near a person, or in a completely separate location. Mere proximity to a communication device does not establish that the person intentionally exercised control over it in the absence of additional evidence. Control can be established by proof that the person had direct personal power to control the communications device or the present ability to direct its control by another.

Joint possession.

Possession of a communications device card may be sole or joint, that is, two or more persons may possess it.

“Willfully” means knowingly, intentionally, and purposely.

“Cable Operator” means a communications service provider who provides some or all of its communications services pursuant to a “cable television franchise” issued by a “franchising authority.” See 47 U.S.C. s. 522(9-10) (1992) for definitions of “cable television franchise” and “franchising authority.”

“Cable System” means any communications service network, system or facility owned or operated by a cable operator.

“Communications Device” means any type of electronic mechanism, transmission line or connections and appurtenances thereto, instrument, device, machine, equipment, or software that is capable of intercepting, transmitting, acquiring, decrypting, or receiving any communications service, or any part, accessory, or component thereof, including any computer circuit, splitter, connector, switches, transmission hardware, security module, smart card, software, computer chip, electronic mechanism, or other component, accessory, or part of any communication device which is capable of facilitating the interception, transmission, retransmission, acquisition, decryption, or reception of any communications service.

“Communications service” means any service lawfully provided for a charge or compensation by any cable system or by any radio, fiber optic, photo-optical, electromagnetic, photoelectronic, satellite, microwave, data transmission, internet-based, or wireless distribution network, system, or facility, including but not limited to, any electronic, data, video, audio, internet access, microwave, and radio communications, transmissions, signals, and service, and any such communications, transmissions, signals, and services lawfully provided for a charge or compensation, directly or indirectly by or through any of those networks, systems, or facilities.

“Communications service provider” means

- 1. Any person or entity owning or operating any cable system or any fiber optic, photo-optical, electromagnetic, photoelectronic, satellite, wireless, microwave, radio, data transmission, or internet-based distribution network, system, or facility.**
- 2. Any person or entity providing any lawful communications service, whether directly or indirectly, as a reseller or licensee, by or through any such distribution network, system or facility.**

Give only if the bracketed portion in element #3 is read.

The term “assisting others” includes:

- 1. The sale, transfer, license, distribution, deployment, lease, manufacture, development, or assembly of a communication device for the purpose of facilitating the**

unauthorized receipt, acquisition, interception, disruption, decryption, transmission, retransmission, or access to any communications service offered by a cable operator or any other communications service provider.

- 2. The sale, transfer, license, distribution, deployment, lease, manufacture, development, or assembly of a communication device for the purpose of defeating or circumventing any effective technology, device, or software, or any component thereof, used by cable operator or other communications service provider to protect any communications service from unauthorized receipt, acquisition, interception, disruption, decryption, transmission, retransmission.**

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 2007 [965 So. 2d 811] and was amended on October 2, 2020.