

CS FOR HOUSE BILL NO. 187(FIN) am
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Amended: 4/27/93

Offered: 4/26/93

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act authorizing the interception of private communications related to the
2 commission of certain criminal offenses; relating to pen registers, trap devices, and
3 communications in electronic storage; amending statutes relating to eavesdropping
4 and wiretapping; relating to the penalty for violation of statutes relating to
5 eavesdropping and unauthorized interception, publication, or use of private
6 communications; and providing for an effective date."

7 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

8 * Section 1. AS 12 is amended by adding a new chapter to read:

9 CHAPTER 37. AUTHORIZED COMMUNICATIONS INTERCEPTIONS.

10 ARTICLE 1. INTERCEPTION OF PRIVATE COMMUNICATIONS.

11 Sec. 12.37.010. AUTHORIZATION TO INTERCEPT COMMUNICATIONS.

12 The attorney general or a person designated in writing or by law to act for the attorney
13 general, may authorize, in writing, an ex parte application to a court of competent

1 jurisdiction for an order authorizing the interception of a private communication if the
2 interception may provide evidence of, or may assist in the apprehension of persons
3 who have committed, are committing, or are planning to commit, the following
4 offenses:

5 (1) murder in the first or second degree under AS 11.41.100 -
6 11.41.110;

7 (2) kidnapping under AS 11.41.300; or

8 (3) a class A or unclassified felony drug offense under AS 11.71.

9 Sec. 12.37.020. APPLICATION FOR ORDER AUTHORIZING A
10 COMMUNICATION INTERCEPTION. (a) Each application for an order authorizing
11 the interception of a private communication shall be made in writing upon oath or
12 affirmation and must state

13 (1) the authority of the applicant to make the application;

14 (2) the identity of the peace officer for whom the authority to intercept
15 the communication is sought;

16 (3) the facts relied upon by the applicant for the order, including

17 (A) if known, the identity of the particular person committing
18 the offense and whose communication is to be intercepted;

19 (B) the details as to the particular offense that has been, is
20 being, or is about to be committed;

21 (C) the specific type of communication to be intercepted;

22 (D) a showing that there is probable cause to believe that the
23 communication will be communicated on the specific communication facility
24 involved or at the specific place where the oral communication is to be
25 intercepted;

26 (E) a showing that there is probable cause to believe that the
27 facility from which, or the place where, the communication is to be intercepted,
28 is, has been, or is about to be used in connection with the commission of the
29 offense, or is leased to, listed in the name of, or commonly used by, the person
30 whose communication is to be intercepted;

31 (F) the character and location of the specific communication

1 facility involved or the specific place where the oral communication is to be
2 intercepted;

3 (G) the objective of the investigation;

4 (H) a statement of the period of time for which the interception
5 is required to be maintained, and, if the objective of the investigation is such
6 that the authorization for interception should not automatically terminate when
7 the described type of communication has been first obtained, a specific
8 statement of facts establishing probable cause to believe that additional
9 communications of the same type will continue to occur;

10 (I) a specific statement of facts showing that other normal
11 investigative procedures with respect to the offense have been tried and have
12 failed, or reasonably appear to be unlikely to succeed if tried, or are too
13 dangerous to employ;

14 (4) the facts known to the applicant concerning all previous applications
15 made to a court for the issuance of an order authorizing the interception of a private
16 communication involving any of the same facilities or places specified in the current
17 application or involving the same person whose communication is to be intercepted,
18 and the action taken by the court on each application;

19 (5) if the application is for an extension of a previously issued order,
20 a statement of facts showing the results obtained thus far from the interception, or a
21 reasonable explanation for the failure to obtain results;

22 (6) a proposed order authorizing the communication interception; and

23 (7) any additional facts in support of the application considered
24 appropriate by the applicant or by the court.

25 (b) If an applicant for an order authorizing a communications interception is
26 relying upon uncorroborated evidence provided by a confidential informant, the court
27 may hold an in camera hearing at which it may inquire as to the identity of the
28 informant or as to any other relevant information concerning the basis upon which the
29 applicant is applying for the order.

30 Sec. 12.37.030. REQUIREMENTS FOR AN ORDER AUTHORIZING A
31 COMMUNICATIONS INTERCEPTION. Upon consideration of an application, the

1 court may enter an ex parte order authorizing the interception of a private
2 communication if the court determines, on the basis of the application, that

3 (1) there is probable cause to believe that the person whose
4 communication is to be intercepted is committing, has committed, or is planning to
5 commit an offense listed in AS 12.37.010;

6 (2) there is probable cause to believe that a communication concerning
7 the offense may be obtained through the interception;

8 (3) there is probable cause to believe that the facility from which, or
9 the place where, the communication is to be intercepted, is, has been, or is about to
10 be used in connection with the commission of the offense, or is leased to, listed in the
11 name of, or commonly used by, the person whose communication is to be intercepted;

12 (4) normal investigative procedures with respect to the offense have
13 been tried and have failed or reasonably appear to be either unlikely to succeed if tried
14 or too dangerous to employ; and

15 (5) if the application, other than an application for an extension, is for
16 an order to intercept a communication of a person, or involving a communications
17 facility, that was the subject of a previous application, the current application is based
18 upon new evidence or information different from and in addition to the evidence or
19 information offered to support the previous application.

20 Sec. 12.37.040. CONTENTS OF ORDER AUTHORIZING A
21 COMMUNICATIONS INTERCEPTION; LIMITATIONS ON DISCLOSURE. (a)
22 Each order entered under AS 12.37.030 must state

23 (1) that the court is authorized to enter the order;

24 (2) if known, the identity of, or a particular description of, the person
25 whose communications are to be intercepted;

26 (3) the character and location of the particular communication facility
27 or the particular place of the communication as to which authority to intercept is
28 granted;

29 (4) a specific description of the type of communication to be
30 intercepted and a statement of the particular offense to which it relates;

31 (5) the identity of the peace officer or officers to whom the authority

1 to intercept a communication is given and the identity of the person who authorized
2 the application; and

3 (6) the period of time during which the interception is authorized,
4 including a statement as to whether or not the interception automatically terminates
5 when the described communication has been first obtained, and a statement that the
6 interception shall begin and terminate as soon as practicable and be conducted in such
7 a manner as to minimize the interception of communications not otherwise subject to
8 interception.

9 (b) An order entered under AS 12.37.030 may not authorize the interception
10 of private communications for a period of time exceeding 30 days or that period
11 necessary to achieve the objective of the authorization, whichever is shorter. The
12 authorized interception period begins on the day on which the peace officer first begins
13 to conduct an interception under the order or 10 days after the order is entered,
14 whichever is earlier. Extensions of 30 days or less may be granted if application for
15 each extension order is made under AS 12.37.020 and the necessary findings are made
16 by the court under AS 12.37.030.

17 (c) The court may require an applicant to file periodic reports with the court,
18 showing what progress is being made toward achieving the authorized objective of the
19 communication interception and what need exists for continued interception. The
20 intervals at which the reports are to be filed shall be determined by the court.

21 (d) An order entered under AS 12.37.030 may, upon request of the applicant,
22 direct that a communications common carrier, provider of wire or electronic
23 communication services, landlord, owner, building operator, custodian, or other person
24 furnish the applicant, without delay, all information, facilities, and technical assistance
25 necessary to accomplish the interception unobtrusively. The obligations of a
26 communications common carrier under an order may include the obligation to conduct
27 an in-progress trace during an interception. A communications common carrier,
28 provider of wire or electronic communication services, landlord, owner, building
29 operator, custodian, or other person who furnishes facilities or technical assistance
30 under this subsection shall be compensated by the applicant at prevailing rates.

31 (e) A communications common carrier, provider of wire or electronic

1 communication services, landlord, owner, building operator, custodian, or other person
2 who, under this section, has been shown a copy of an order authorizing the
3 interception of a private communication may not disclose the existence of the order
4 or of the device used to accomplish the interception unless

5 (1) the person is required to do so by legal process; and

6 (2) the person gives prior notification to the attorney general or the
7 attorney general's designee who authorized the application for the order.

8 (f) An order entered under AS 12.37.030 may, upon the request of the
9 applicant, authorize the applicant to enter a designated place or facility as often as
10 necessary to install, maintain, or remove an intercepting device. The applicant shall
11 notify the court of each such entry before its occurrence, if practicable. If prior notice
12 is not practicable, the applicant shall notify the court within 72 hours after the entry.

13 Sec. 12.37.050. PRIVILEGED COMMUNICATIONS. An otherwise
14 privileged communication intercepted in accordance with, or in violation of, the
15 provisions of AS 12.37.010 - 12.37.130 does not lose its privileged character by reason
16 of the interception.

17 Sec. 12.37.060. COLLATERAL AUTHORITY OF COURT;
18 INTERPRETATION OF ACT. (a) Notwithstanding any other provision of
19 AS 12.37.010 - 12.37.130, a court to which an application is made for an order
20 authorizing the interception of a private communication may take the evidence, make
21 the findings, or issue the other orders necessary to conform the proceedings or the
22 entry of an order to the United States Constitution, the Constitution of the State of
23 Alaska, or any applicable law of the United States or of the state.

24 (b) When the language of AS 12.37.010 - 12.37.130 is the same or similar to
25 the language of 18 U.S.C. 2510 - 2521, the courts of this state in construing
26 AS 12.37.010 - 12.37.130 shall follow the construction given to those federal statutes
27 by the federal courts.

28 Sec. 12.37.070. RECORDS AND RECORDINGS AND CUSTODY OF
29 THEM. (a) A communication intercepted under AS 12.37.010 - 12.37.130 shall, if
30 practicable, be recorded by tape or wire or other comparable method. The recording
31 shall, if practicable, be done in a way that will protect it from editing or other

1 alteration. During an interception, the peace officer authorized to act under the court's
2 order shall, if practicable, keep a signed, written record of the interception, that shall
3 include the following information:

4 (1) the date and hours during which the interception equipment or site
5 was monitored;

6 (2) the time and duration of each intercepted communication;

7 (3) the parties to each intercepted communication, if known; and

8 (4) a summary of the contents of each intercepted communication.

9 (b) Immediately upon expiration of the authorized interception period specified
10 in an order entered under AS 12.37.030 or, if an extension order has been entered,
11 upon expiration of the authorized interception period specified in that order, any tapes
12 or other recordings, and any records made during the interception, and all orders
13 authorizing the interception, shall be transferred to the court that entered the order and
14 shall be sealed under its direction. Custody of the tapes, other recordings, and records
15 of the interception shall be maintained as the court directs. The tapes, recordings, and
16 records of the interception may not be destroyed except upon order of the court, and
17 in any event shall be kept for a minimum period of 10 years. Duplicate recordings
18 and records of the interception may be made for disclosure or use under
19 AS 12.37.090(d) and 12.37.110. The presence of the seal required by this subsection,
20 or a satisfactory explanation for its absence, is a prerequisite for the use or disclosure
21 of the contents of any communication intercepted under AS 12.37.010 - 12.37.130.

22 **Sec. 12.37.080. CUSTODY OF APPLICATIONS AND ORDERS; PENALTY**
23 **FOR DISCLOSURE.** (a) Except for a copy that may be retained for use by the
24 applicant, all applications made and orders entered under AS 12.37.010 - 12.37.130 for
25 the interception of private communications shall be sealed by the court and maintained
26 as the court directs. The applications and orders may not be destroyed except upon
27 order of the court and in any event shall be kept for a minimum period of 10 years.

28 (b) In addition to any other remedies or penalties provided by law, the
29 disclosure of applications and orders in violation of AS 12.37.010 - 12.37.130 is
30 punishable under AS 09.50.020 as contempt of court.

31 **Sec. 12.37.090. NOTICE OF INTERCEPTION AND DISCLOSURE.** (a)

1 **Within a reasonable period of time, but no later than 90 days following the expiration**
2 **of the authorized interception period specified in an order entered under AS 12.37.030**
3 **or, if an extension order has been entered, upon expiration of the authorized**
4 **interception period specified in that order, the court entering the order shall cause a**
5 **notice of interception to be served on**

6 (1) a person who is named in the order; or

7 (2) a party to the intercepted communications if the court determines
8 **in its discretion that the party should be informed in the interest of justice.**

9 (b) The notice of interception must include a statement of

10 (1) the fact of the entry of the order under AS 12.37.030;

11 (2) the date of the entry of the order;

12 (3) the period of time for which the interception was authorized; and

13 (4) whether and how many private communications were intercepted.

14 (c) On an ex parte showing of good cause, the court may postpone service of
15 **the notice of interception.**

16 (d) Upon the filing of a motion, the court may make available for inspection
17 **to a person or the person's attorney, as the court determines to be in the interest of**
18 **justice, those portions of an intercepted communication, an application for an order,**
19 **and an order that the court considers appropriate.**

20 **Sec. 12.37.100. APPROVAL FOR UNANTICIPATED INTERCEPTION. If,**
21 **while intercepting a private communication under the provisions of AS 12.37.010 -**
22 **12.37.130, a peace officer intercepts a communication that relates to a felony offense**
23 **other than one specified in the order of authorization, the attorney general, or a person**
24 **designated in writing or by law to act for the attorney general, may file a motion for**
25 **an order approving that interception so that the communication, or evidence derived**
26 **from it, may be used during testimony in an official proceeding. A court may enter**
27 **an order approving the interception if it finds that the person who intercepted the**
28 **communication was otherwise acting under the provisions of AS 12.37.010 -**
29 **12.37.130.**

30 **Sec. 12.37.110. USE OF INTERCEPTED COMMUNICATION. An**
31 **intercepted private communication, and evidence derived from it, may not be received**

1 in evidence or otherwise disclosed in an official proceeding unless each party to the
2 communication who is a party in the official proceeding was furnished, at least 10
3 days before the proceeding, with a copy of the court order authorizing the interception
4 and of the application for authorization under which the order was issued. The 10-day
5 period may be waived by the presiding official if the presiding official finds that it was
6 not practicable to furnish the person with the information 10 days before the
7 proceeding and also finds that the person will not be prejudiced by the delay in
8 receiving the information.

9 Sec. 12.37.120. SUPPRESSION OF UNLAWFUL INTERCEPTIONS. (a) A
10 motion to suppress the contents of an intercepted private communication, or evidence
11 derived from it, may be filed in a proceeding on the ground that the

12 (1) interception was unlawful;

13 (2) order of authorization under which the communication was
14 intercepted is insufficient on its face; or

15 (3) interception was not made in substantial compliance with the order
16 of authorization.

17 (b) Upon the filing of a motion to suppress under this section, the court may
18 make available to the moving party or that party's attorney, for inspection, the portion
19 or portions of the intercepted communication, applications, and orders that the court
20 determines to be in the interest of justice.

21 (c) Suppression is the only judicial sanction available for a nonconstitutional
22 violation of AS 12.37.010 - 12.37.130 involving an intercepted private communication.

23 Sec. 12.37.130. REQUIRED REPORTS. (a) Within 30 days after the
24 expiration of the authorized interception period specified in an order entered under
25 AS 12.37.030 or, if an extension order has been entered, upon expiration of the
26 authorized interception period specified in that order, the court entering the order shall
27 report to the Administrative Office of the United States Courts the following
28 information:

29 (1) the fact that an order or extension order was applied for;

30 (2) the kind of order or extension order applied for;

31 (3) whether the order or extension order was granted as applied for or

1 was granted as modified;

2 (4) the period of time for which the interception is authorized by the
3 order and the number of, and duration of the authorized interception period specified
4 in, any extension orders regarding that order;

5 (5) the offense specified in the order, extension order, or application;

6 (6) the name and title of the applicant; and

7 (7) the nature of the facilities from which or the place where the
8 communication was to be intercepted.

9 (b) In January of each year, the attorney general or the attorney general's
10 designee shall report to the Administrative Office of the United States Courts the
11 following information with respect to orders and extension orders obtained in the
12 preceding calendar year:

13 (1) the information required by (a) of this section with respect to each
14 application for an order or extension order made;

15 (2) a general description of the interceptions made under the order or
16 extension, including the approximate

17 (A) nature and frequency of incriminating communications
18 intercepted;

19 (B) nature and frequency of other communications intercepted;

20 (C) number of persons whose communications were intercepted;

21 and

22 (D) nature, amount, and cost of the manpower and other
23 resources used in the interceptions;

24 (3) the number of arrests resulting from interceptions made under the
25 order or extension order, and the offenses for which arrests were made;

26 (4) the number of trials resulting from the interceptions;

27 (5) the number of motions to suppress made with respect to the
28 interceptions, the number of such motions granted, and the number of such motions
29 denied; and

30 (6) the number of convictions resulting from interceptions and the
31 offenses for which the convictions were obtained, and a general assessment of the

1 importance of the interceptions.

2 (c) In addition to the report required by (b) of this section, the attorney general
3 or the attorney general's designee shall prepare and make available to the public
4 annual reports on the operation of AS 12.37.010 - 12.37.130. The reports shall contain
5 the following information:

6 (1) the number of applications made under AS 12.37.010 - 12.37.130;

7 (2) the number of orders entered by the court;

8 (3) the effective period of time for which each interception was
9 authorized;

10 (4) the number of, and duration of the authorized interception period
11 specified in, any extension orders;

12 (5) the offenses in connection with which the communications were
13 sought;

14 (6) the names and titles of the applicants;

15 (7) the number of indictments or other charges resulting from each
16 application;

17 (8) the offenses that each indictment or other charge relates to; and

18 (9) the disposition of each indictment or other charge.

19 **ARTICLE 2. PEN REGISTERS AND TRAP DEVICES.**

20 **Sec. 12.37.200. AUTHORIZATION TO USE PEN REGISTERS AND TRAP**
21 **DEVICES.** Upon application by a peace officer made in conformity with any
22 provision of federal law authorizing such an application, a court may issue an order
23 authorizing or concerning the use of a pen register or a trap device as permitted under
24 federal law.

25 **ARTICLE 3. COMMUNICATIONS IN ELECTRONIC STORAGE.**

26 **Sec. 12.37.300. AUTHORIZATION FOR ACCESS TO AND USE OF**
27 **COMMUNICATIONS IN ELECTRONIC STORAGE.** Upon application by a peace
28 officer made in conformity with any provision of federal law authorizing such an
29 application, a court may issue an order authorizing or concerning access to and
30 disclosure or use of communications in electronic storage as permitted under federal
31 law.

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ARTICLE 4. GENERAL PROVISIONS.

Sec. 12.37.900. DEFINITIONS. In this chapter,

- (1) "communications common carrier" has the meaning given in AS 42.20.390;
- (2) "contents" has the meaning given in AS 42.20.390;
- (3) "court" means superior court, except that in AS 12.37.200 it means either superior or district court;
- (4) "electronic communication" has the meaning given in AS 42.20.390;
- (5) "electronic communication service" has the meaning given in AS 42.20.390;
- (6) "electronic storage" means any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission of the communication, and any storage of the communication by an electronic communication service for purposes of backup protection of the communication;
- (7) "in-progress trace" means to determine the origin of a wire communication to a telephone or telegraph instrument, equipment, or facility during the course of the communication;
- (8) "intercept" has the meaning given in 42.20.390;
- (9) "peace officer" has the meaning given in AS 11.81.900(b);
- (10) "pen register" means a device or apparatus that is connected to a telephone or telegraph instrument, equipment, or facility to determine the destination of a wire communication to a telephone or telegraph instrument, equipment, or facility, but that does not intercept the contents of the communication; "pen register" does not include a device used by a provider or customer of a wire or electronic communication service for billing, or for recording as an incident to billing, for communications services provided by the provider, nor a device used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business;
- (11) "official proceeding" means a judicial, legislative, or administrative proceeding or any other proceeding before a government agency or official authorized to hear evidence under oath, other than a grand jury;

- 1 (12) "oral communication" has the meaning given in AS 42.20.390;
2 (13) "private communication" has the meaning given in AS 42.20.390;
3 (14) "trap device" means a device or apparatus that is connected to a
4 telephone or telegraph instrument, equipment, or facility to determine the origin of a
5 wire communication to the telephone or telegraph instrument, equipment, or facility,
6 but that does not intercept the contents of the communication;
7 (15) "wire communication" has the meaning given in AS 42.20.390.

8 * Sec. 2. AS 42.20.300(a) is amended to read:

9 (a) Except for a party to a private conversation, a [A] person who receives
10 or assists in receiving, or who transmits or assists in transmitting a private
11 communication [BY WIRE OR RADIO] may not divulge or publish the existence,
12 contents, substance, purport, effect, or meaning of the communication, except through
13 authorized channels of transmission or reception [TO]

- 14 (1) to the addressee or the agent or attorney of the addressee;
15 (2) to a person employed or authorized to forward a communication to
16 its destination;
17 (3) to proper accounting or distributing officers of the various
18 communicating centers over which the communication may be passed;
19 (4) to the master of a ship under whom the person is serving;
20 (5) to another on demand of lawful authority; or
21 (6) in response to a subpoena issued or order entered by a court of
22 competent jurisdiction.

23 * Sec. 3. AS 42.20.300(b) is amended to read:

24 (b) Except as provided in AS 12.37, a [A] person not authorized by a party
25 to the communication may not intentionally intercept a private communication or
26 divulge or publish the existence, contents, substance, purport, effect, or meaning of the
27 intercepted communication to any person.

28 * Sec. 4. AS 42.20.320 is amended to read:

29 Sec. 42.20.320. EXEMPTIONS. The following activities are exempt from the
30 provisions of AS 42.20.300 and 42.20.310:

- 31 (1) listening to a radio or wireless communications of any sort where

1 the same are publicly made;

2 (2) hearing conversation when heard by employees of a common carrier
3 by wire incidental to the normal course of their employment in the operation,
4 maintenance or repair of the equipment of the common carrier by wire; provided the
5 information obtained is not used or divulged in any manner by the hearer;

6 (3) a broadcast by radio or other means whether it is a live broadcast
7 or recorded for the purpose of later broadcasts of any function where the public is in
8 attendance and the conversations that are overheard are incidental to the main purpose
9 for which the broadcast is then being made;

10 (4) recording or listening with the aid of any device to an emergency
11 communication made in the normal course of operations by a federal, state or local law
12 enforcement agency or institutions dealing in emergency services, including but not
13 limited to hospitals, clinics, ambulance services, fire fighting agencies, a public utility
14 emergency repair facility, civilian defense establishment or military installations;

15 (5) inadvertent interception of telephone conversations over party lines;

16 (6) a peace officer, or a person acting at the direction or request
17 of a peace officer, engaging in conduct authorized by or under AS 12.37.

18 * Sec. 5. AS 42.20.320 is amended by adding a new subsection to read:

19 (b) Notwithstanding any other provision of law, a person who inadvertently
20 intercepts a private communication that appears to pertain to the commission of a
21 crime may report the information to a law enforcement agency.

22 * Sec. 6. AS 42.20 is amended by adding a new section to read:

23 Sec. 42.20.325. DUTY TO REPORT. A person who is an employee of a
24 communications common carrier or of an electronic communication service or of a
25 private investigation agency, and has knowledge of the probable occurrence of conduct
26 that violates a provision of AS 42.20.300 or 42.20.310 shall report the conduct, in
27 writing, to the commissioner of public safety within 30 days after learning of the
28 conduct.

29 * Sec. 7. AS 42.20.330 is amended to read:

30 Sec. 42.20.330. PENALTY. A person who violates any of the provisions of
31 AS 42.20.300 and 42.20.310 is guilty of a class A misdemeanor [AND UPON

1 **CONVICTION IS PUNISHABLE BY A FINE OF NOT MORE THAN \$1,000, OR**
2 **BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH].**

3 * **Sec. 8.** AS 42.20 is amended by adding a new section to read:

4 **Sec. 42.20.390. DEFINITIONS.** In AS 42.20.300 - 42.20.390,

5 (1) "communications common carrier" means a business or person
6 engaged as a common carrier for hire in the transmission of communications by wire,
7 cable, satellite, electromagnetic waves, or radio, not including radio broadcasting;

8 (2) "contents" includes information obtained from a private
9 communication concerning the existence, substance, purport, or meaning of the
10 communication, or the identity of a party of the communication;

11 (3) "eavesdropping device" means a device or apparatus, including an
12 induction coil, that can be used to intercept an oral, wire, or electronic communication,
13 other than

14 (A) a hearing aid or similar device used for the restoration of
15 subnormal hearing to not better than normal; or

16 (B) a telephone or telegraph instrument, equipment, or facility,
17 or any component of such an instrument, equipment, or facility

18 (i) being used by a provider of wire or electronic
19 communication service in the ordinary course of its business; or

20 (ii) furnished to a subscriber or user by a provider of
21 wire or electronic communication service in the ordinary course of its
22 business and being used by the subscriber or user in the ordinary course
23 of its business;

24 (4) "electronic communication" means any transfer of signs, signals,
25 writing, images, sounds, data, or intelligence of any nature transmitted in whole or in
26 part by a wire, radio, electromagnetic, photoelectronic or photo-optical system,
27 including a cellular or cordless telephone communication, but does not include

28 (A) wire or oral communications;

29 (B) communications made through a tone-only paging device;

30 (C) communications made through a tracking device consisting
31 of an electronic or mechanical device that permits the tracking of the

1 movement of a person or object; or

2 (D) communications that are disseminated by the sender with
3 the intent or expectation, or through a method of transmission that is so
4 configured, that the communication is readily accessible to the general public;

5 (5) "electronic communication service" means a service that provides
6 to users of the service the ability to send or receive wire or electronic communications;

7 (6) "employee" includes a person who is an officer, agent, or employee
8 of, or a person under contract with, a business or a government entity;

9 (7) "intercept" means the aural or other acquisition of the contents of
10 an oral, wire, or electronic communication through the use of any electronic,
11 mechanical, or other device, including the acquisition of the contents by simultaneous
12 transmission or by recording;

13 (8) "oral communication" means human speech used to communicate
14 information from one party to another;

15 (9) "private communication" means an oral, wire, or electronic
16 communication uttered or transmitted by a person who has a reasonable expectation
17 that the communication is not subject to interception;

18 (10) "wire communication" means human speech used to communicate
19 information from one party to another in whole or in part through the use of facilities
20 for the transmission of communications by wire, cable, or other similar connection
21 between the point of origin and the point of reception furnished or operated by a
22 telephone, telegraph, or radio company for hire as a communications common carrier,
23 but does not include the radio portion of a cordless telephone communication that is
24 transmitted between the cordless telephone handset and the base unit.

25 * Sec. 9. This Act takes effect July 1, 1993.