

Guide to U.S. Monitoring Laws

1995 Edition

Compiled by:
Frank Terranella, Esq.
106 Cathay Road
Clifton, N.J. 07013

TABLE OF CONTENTS

Federal Monitoring Laws:

The Electronic Communications Privacy Act of 1986

18 USC _2510	1
18 USC _2511	4
18 USC _2512	10
18 USC _2513	11
18 USC _2515	12
18 USC _2516	12
18 USC _2517	15
18 USC _2518	16
18 USC _2519	23
18 USC _2520	25
18 USC _2521	26
18 USC _2522	27

The Communications Act of 1934

47 USC _302a	28
47 USC _605	29

Commentary on Federal Monitoring Laws 34

State Monitoring Laws:

California

Penal Code _632.5	38
Penal Code _632.6	39
Penal Code _632.7	40
Penal Code _633	42
Penal Code _633.1	42
Penal Code _633.5	43
Penal Code _634	43
Penal Code _635	43
Penal Code _636	44
Penal Code _636.5	45

Florida

_843.16	46
---------	----

Indiana

_35-44-3-12	48
-------------	----

Kentucky

_432.570	50
----------	----

Maine

Title 17 _3962	53
----------------	----

Michigan

Penal Code _750.508	54
---------------------	----

Minnesota

_299C.37	55
_609.856	56
Nebraska	
_28-1312	57
New Jersey	
_2C:33-21 to 23	58
New York	
Vehicle & Traffic Law _397	59
Penal Law _140.40	60
North Dakota	
_54-23.2-06	61
Oklahoma	
Title 21 _1214	62
Rhode Island	
_11-1-11	63
South Dakota	
Chapter 23-4	64
Vermont	
Title 13 _3014	66
West Virginia	
_15-3-5	67

APPENDIX

FCC PR Docket No. 91-3668	
Chart of State Monitoring Laws	76

cCopyright 1995, Frank Terranella

FOREWORD

It is unfortunate that a guide such as this is necessary. Most Americans are unaware of the laws contained here and, if asked, would probably be surprised to know that they could be arrested simply for listening to the radio. The battle in many states to repeal or amend monitoring laws is continuing. New Jersey and Kentucky have ameliorated their laws in the last few years to the form contained here. On the other hand, California's law that made monitoring cordless telephone calls illegal in that state has now spread to become federal law.

As you can see, the law is a continuing process. Any compendium of laws such as this can be no more than a snapshot. New laws are passed every day; old ones are amended. The limitations of legal research today still leave a lag time of several months to a year before new laws are reflected in the materials in law libraries. Even computerized legal research databases such as Westlaw have considerable lag times. Thus, it is possible that there are more laws restricting monitoring than are set forth here, and it is also possible that some of the laws set forth here have been amended or even repealed by the time you read this. That is inevitable. This guide can do no more than to alert you to laws that have been passed. It is your responsibility to check that the law, as set forth here, is still valid. I can only point you in the right direction.

The laws compiled here can be broken down into three classifications: (1) outright bans on monitoring by everyone (usually only in motor vehicles); (2) outright bans on monitoring by criminals; and (3) bans on illegal use of information heard on the radio. Outright bans on monitoring exist in Florida, Indiana, Kentucky, Michigan, Minnesota and New York. There are usually several exemptions granted to people like amateur radio operators, journalists, and law enforcement personnel. South Dakota and Rhode Island prohibit certain criminals from having scanners. The last (and in my opinion more rational) type of law, which forbids not listening, but improper use of information heard, exists in California, Minnesota, Nebraska, New Jersey, New York, Oklahoma, Vermont, and West Virginia. North Dakota prohibits possession of a radio which will both transmit and receive police frequencies. The other states have no laws restricting radio listening, as far as I can tell. State implementations of the Electronic Communications Privacy Act (ECPA) are not included here since these statutes merely restate the ECPA in most cases.

Any questions or comments regarding this guide (including any laws not found here) can be addressed to me at my office address, or via CompuServe (75006,2317). Please note that nothing in this guide should be taken by anyone as constituting legal advice.

--Clifton, N.J., February 22, 1995

18 USC ss 2510-2522

Sec. 2510. Definitions

As used in this chapter--

(1) "wire communication" means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception (including the use of such connection in a switching station) furnished or operated by any person engaged in providing or operating such facilities for the transmission of interstate or foreign communications for communications affecting interstate or foreign commerce and such term includes any electronic storage of such communication;

(2) "oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation, but such term does not include any electronic communication;

(3) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States;

(4) "intercept" means the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device;

(5) "electronic, mechanical, or other device" means any device or apparatus which can be used to intercept a wire, oral, or electronic communication other than

(a) any telephone or telegraph instrument, equipment or facility, or any component thereof, (i) furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business or furnished by such subscriber or user for connection to the facilities of such service and used in the ordinary course of its business; or (ii) being used by a provider of wire or electronic communication service in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of his duties;

(b) a hearing aid or similar device being used to correct subnormal hearing to not better than normal;

(6) "person" means any employee, or agent of the United States or any State or political subdivision thereof, and any individual, partnership, association, joint stock company, trust, or corporation;

(7) "Investigative or law enforcement officer" means any officer of the United States or of a State or political subdivision thereof, who is empowered by law to conduct investigations of or to make arrests for offenses enumerated in this chapter, and any attorney authorized by law to prosecute or participate in the prosecution of such offenses;

(8) "contents", when used with respect to any wire, oral, or electronic communication, includes any information concerning the substance, purport, or meaning of that communication;

(9) "Judge of competent jurisdiction" means--

(a) a judge of a United States district court or a United States court of appeals; and

(b) a judge of any court of general criminal jurisdiction of a State who is authorized by a statute of that State to enter orders authorizing interceptions of wire, oral, or electronic communications;

(10) "communication common carrier" shall have the same meaning which is given the term "common carrier" by section 153(h) of title 47 of the United States Code;

(11) "aggrieved person" means a person who was a party to any intercepted wire, oral, or electronic communication or a person against whom the interception was directed;

(12) "electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or foreign commerce, but does not include--

(A) any wire or oral communication;

(B) any communication made through a tone-only paging device; or

(C) any communication from a tracking device (as defined in section 3117 of this title);

(13) "user" means any person or entity who--

(A) uses an electronic communication service; and

(B) is duly authorized by the provider of such service to engage in such use;

(14) "electronic communications system" means any wire, radio, electromagnetic, photooptical or photoelectronic facilities for the transmission of electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications;

(15) "electronic communication service" means any service which provides to users thereof the ability to send or receive wire or electronic communications;

(16) "readily accessible to the general public" means, with respect to a radio communication, that such communication is not--

(A) scrambled or encrypted;

(B) transmitted using modulation techniques whose essential parameters have been withheld from the public with the intention of preserving the privacy of such communication;

(C) carried on a subcarrier or other signal subsidiary to a radio transmission;

(D) transmitted over a communication system provided by a common carrier, unless the communication is a tone only paging system communication;

(E) transmitted on frequencies allocated under part 25, subpart D, E, or F of part 74, or part 94 of the Rules of the Federal Communications Commission, unless, in the case of a communication transmitted on a frequency allocated under part 74 that is not exclusively allocated to broadcast auxiliary services, the communication is a two-way voice communication by radio; or

(F) an electronic communication;

(17) "electronic storage" means--

(A) any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and

(B) any storage of such communication by an electronic communication service for purposes of backup protection of such communication; and

(18) "aural transfer" means a transfer containing the human voice at any point between and including the point of origin and the point of reception.

Sec. 2511. Interception and disclosure of wire, oral, or electronic communications prohibited

(1) Except as otherwise specifically provided in this chapter 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(b)-(c), 2511(e), 2516, and 2518 of this subchapter, (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 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, 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 signed by the authorizing judge, or

(B) a certification in writing by a person specified in section 2518(7) of this title 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 a court order or certification under this chapter, 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. 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 or certification under this chapter.

(b) It shall not be unlawful under this chapter 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 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 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 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, 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, as authorized by that Act.

(f) Nothing contained in this chapter or chapter 121, or section 705 of the Communications Act of 1934, 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, and procedures in this chapter and the Foreign Intelligence Surveillance Act of 1978 shall be the exclusive means by which electronic surveillance, as defined in section 101 of such Act, and the interception of domestic wire and oral communications may be conducted.

(g) It shall not be unlawful under this chapter or chapter 121 of this title 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; or

(II) is excepted from the application of section 705(a) of the Communications Act of 1934 by section 705(b) of that Act;

(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--

(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); 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.

(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.

(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;

(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) If the offense is a first offense under paragraph (a) of this subsection and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, and the wire or electronic communication with respect to which the offense under paragraph (a) is a radio communication that is not scrambled, encrypted or transmitted using modulation techniques the essential parameters of which have been withheld from the public with the intention of preserving the privacy of such communication, then--

(i) if the communication is not the radio portion of a cellular telephone communication, a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit, a public land mobile radio service communication or a paging service communication, and the conduct is not that

described in subsection (5), the offender shall be fined under this title or imprisoned not more than one year, or both; and

(ii) if the communication is the radio portion of a cellular telephone communication, a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit, a public land mobile radio service communication or a paging service communication, the offender shall be fined under this title.

(c) 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 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 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 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, the Federal Government shall be entitled to appropriate injunctive relief; and

(B) if the violation of this chapter 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, 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.

Sec. 2512. Manufacture, distribution, possession, and advertising of wire, oral, or electronic communication intercepting devices prohibited

(1) Except as otherwise specifically provided in this chapter, any person who intentionally--

(a) sends through the mail, or sends or carries in interstate or foreign commerce, any electronic, mechanical, or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire, oral, or electronic communications;

(b) manufactures, assembles, possesses, or sells any electronic, mechanical, or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire, oral, or electronic communications, and that such device or any component thereof has been or will be sent through the mail or transported in interstate or foreign commerce; or

(c) places in any newspaper, magazine, handbill, or other publication any advertisement of--

(i) any electronic mechanical, or other device knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire, oral, or electronic communications; or

(ii) any other electronic, mechanical, or other device, where such advertisement promotes the use of such device for the purpose of the surreptitious interception of wire, oral, or electronic communications,

knowing or having reason to know that such advertisement will be sent through the mail or transported in interstate or foreign commerce,

shall be fined under this title or imprisoned not more than five years, or both.

(2) It shall not be unlawful under this section for--

(a) a provider of wire or electronic communication service or an officer, agent, or employee of, or a person under contract with, such a provider, in the normal course of the business of providing that wire or electronic communications service, or

(b) an officer, agent, or employee of, or a person under contract with, the United States, a State, or a political subdivision thereof, in the normal course of the activities of the United States, a State, or a political subdivision thereof,

to send through the mail, send or carry in interstate or foreign commerce, or manufacture, assemble, possess, or sell any electronic, mechanical, or other device knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire, oral, or electronic communications.

Sec. 2513. Confiscation of wire, oral, or electronic communication intercepting devices

Any electronic, mechanical, or other device used, sent, carried, manufactured, assembled, possessed, sold, or advertised in violation of section 2511 or section 2512 of this chapter may be seized and forfeited to the United States. All provisions of law relating to (1) the seizure, summary and judicial forfeiture, and condemnation of vessels, vehicles, merchandise, and baggage for violations of the customs laws contained in title 19 of the United States Code, (2) the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from the sale thereof, (3) the remission or mitigation of such forfeiture, (4) the compromise of claims, and (5) the award of compensation to informers in respect of such forfeitures, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions of this section; except that such duties as are imposed upon the collector of customs or any other person with respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the provisions of the customs laws contained in title 19 of the United States Code shall be performed with respect to seizure and forfeiture of electronic, mechanical, or other intercepting devices under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General.

Sec. 2514 (Repealed)

Sec. 2515. Prohibition of use as evidence of intercepted wire or oral communications

Whenever any wire or oral communication has been intercepted, no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States, a State, or a political subdivision thereof if the disclosure of that information would be in violation of this chapter.

Sec. 2516. Authorization for interception of wire, oral, or electronic communications

(1) The Attorney General, Deputy Attorney General, Associate Attorney General, or any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General or acting Deputy Assistant Attorney General in the Criminal Division specially designated by the Attorney General, may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant in conformity with section 2518 of this chapter an order authorizing or approving the interception of wire or oral communications by the Federal Bureau of Investigation, or a Federal agency having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of--

(a) any offense punishable by death or by imprisonment for more than one year under sections 2274 through 2277 of title 42 of the United States Code (relating to the enforcement of the Atomic Energy Act of 1954), section 2284 of title 42 of the United States Code (relating to sabotage of nuclear facilities or fuel), or under the following chapters of this title: chapter 37 (relating to espionage), chapter 105 (relating to sabotage), chapter 115 (relating to treason), chapter 102 (relating to riots) chapter 65 (relating to malicious mischief), chapter 111 (relating to destruction of vessels), or chapter 81 (relating to piracy);

(b) a violation of section 186 or section 501(c) of title 29, United States Code (dealing with restrictions on payments and loans to labor organizations), or any offense which involves murder, kidnapping, robbery, or extortion, and which is punishable under this title;

(c) any offense which is punishable under the following sections of this title: section 201 (bribery of public officials and witnesses), section 215 (relating to bribery of bank officials), section 224 (bribery in sporting contests), subsection (d), (e), (f), (g), (h), or (i) of section 844 (unlawful use of explosives), section 1032 (relating to concealment of assets), section 1084 (transmission of wagering information), section 751 (relating to escape), section 1014 (relating to loans and credit applications generally; renewals and discounts), sections 1503, 1512, and 1513 (influencing or injuring an officer, juror, or witness generally), section 1510

(obstruction of criminal investigations), section 1511 (obstruction of State or local law enforcement), section 1751 (Presidential and Presidential staff assassination, kidnapping, and assault), section 1951 (interference with commerce by threats or violence), section 1952 (interstate and foreign travel or transportation in aid of racketeering enterprises), section 1958 (relating to use of interstate commerce facilities in the commission of murder for hire), section 1959 (relating to violent crimes in aid of racketeering activity), section 1954 (offer, acceptance, or solicitation to influence operations of employee benefit plan), section 1955 (prohibition of business enterprises of gambling), section 1956 (laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 659 (theft from interstate shipment), section 664 (embezzlement from pension and welfare funds), section 1343 (fraud by wire, radio, or television), section 1344 (relating to bank fraud), sections 2251 and 2252 (sexual exploitation of children), sections 2312, 2313, 2314, and 2315 (interstate transportation of stolen property), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), section 1203 (relating to hostage taking), section 1029 (relating to fraud and related activity in connection with access devices), section 3146 (relating to penalty for failure to appear), section 3521(b)(3) (relating to witness relocation and assistance), section 32 (relating to destruction of aircraft or aircraft facilities), section 1963 (violations with respect to racketeer influenced and corrupt organizations), section 115 (relating to threatening or retaliating against a Federal official), and section 1341 (relating to mail fraud), section 351 (violations) with respect to congressional, Cabinet, or Supreme Court assassinations, kidnapping, and assault), section 831 (relating to prohibited transactions involving nuclear materials), section 33 (relating to destruction of motor vehicles or motor vehicle facilities), section 175 (relating to biological weapons), or section 1992 (relating to wrecking trains);

(d) any offense involving counterfeiting punishable under section 471, 472, or 473 of this title;

(e) any offense involving fraud connected with a case under title 11 or the manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic drugs, marihuana, or other dangerous drugs, punishable under any law of the United States;

(f) any offense including extortionate credit transactions under sections 892, 893, or 894 of this title;

(g) a violation of section 5322 of title 31, United States Code (dealing with the reporting of currency transactions);

(h) any felony violation of sections 2511 and 2512 (relating to interception and disclosure of certain communications and to certain intercepting devices) of this title;

(i) any felony violation of chapter 71 (relating to obscenity) of this title;

(j) any violation of section 60123(b) (relating to destruction of a natural gas pipeline) or 46502 (relating to aircraft piracy) of title 49;

(k) any criminal violation of section 2778 of title 22 (relating to the Arms Export Control Act);

(l) the location of any fugitive from justice from an offense described in this section; or

(m) any felony violation of sections 922 and 924 of title 18, United States Code (relating to firearms);

(n) any violation of section 5861 of the Internal Revenue Code of 1986 (relating to firearms); and

(o) any conspiracy to commit any offense described in any subparagraph of this paragraph.

(2) The principal prosecuting attorney of any State, or the principal prosecuting attorney of any political subdivision thereof, if such attorney is authorized by a statute of that State to make application to a State court judge of competent jurisdiction for an order authorizing or approving the interception of wire, oral, or electronic communications, may apply to such judge for, and such judge may grant in conformity with section 2518 of this chapter and with the applicable State statute an order authorizing, or approving the interception of wire, oral, or electronic communications by investigative or law enforcement officers having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of the commission of the offense of murder, kidnapping, gambling, robbery, bribery, extortion, or dealing in narcotic drugs, marihuana or other dangerous drugs, or other crime dangerous to life, limb, or property, and punishable by imprisonment for more than one year, designated in any applicable State statute authorizing such interception, or any conspiracy to commit any of the foregoing offenses.

(3) Any attorney for the Government (as such term is defined for the purposes of the Federal Rules of Criminal Procedure) may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant, in conformity with section 2518 of this title, or order authorizing or approving the interception of electronic communications by an investigative or law enforcement officer having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of any Federal felony.

Sec. 2517. Authorization for disclosure and use of intercepted wire, oral, or electronic communications

(1) Any investigative or law enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents to another investigative or law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

(2) Any investigative or law enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication or evidence derived therefrom may use such contents to the extent such use is appropriate to the proper performance of his official duties.

(3) Any person who has received, by any means authorized by this chapter, any information concerning a wire, oral, or electronic communication, or evidence derived therefrom intercepted in accordance with the provisions of this chapter may disclose the contents of that communication or such derivative evidence while giving testimony under oath or affirmation in any proceeding held under the authority of the United States or of any State or political subdivision thereof.

(4) No otherwise privileged wire, oral, or electronic communication intercepted in accordance with, or in violation of, the provisions of this chapter shall lose its privileged character.

(5) When an investigative or law enforcement officer, while engaged in intercepting wire, oral, or electronic communications in the manner authorized herein, intercepts wire, oral, or electronic communications relating to offenses other than those specified in the order of authorization or approval, the contents thereof, and evidence derived therefrom, may be disclosed or used as provided in subsections (1) and (2) of this section. Such contents and any evidence derived therefrom may be used under subsection (3) of this section when authorized or approved by a judge of competent jurisdiction where such judge finds on subsequent application that the contents were otherwise intercepted in accordance with the provisions of this chapter. Such application shall be made as soon as practicable.

Sec. 2518. Procedure for interception of wire, oral, or electronic communications

(1) Each application for an order authorizing or approving the interception of a wire, oral, or electronic communication under this chapter shall be made in writing upon oath or affirmation to a judge of competent jurisdiction and shall state the applicant's authority to make such application. Each application shall include the following information:

(a) the identity of the investigative or law enforcement officer making the application, and the officer authorizing the application;

(b) a full and complete statement of the facts and circumstances relied upon by the applicant, to justify his belief that an order should be issued, including (i) details as to the particular offense that has been, is being, or is about to be committed, (ii) except as provided in subsection (11), a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted, (iii) a particular description of the type of communications sought to be intercepted, (iv) the identity of the person, if known, committing the offense and whose communications are to be intercepted;

(c) a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;

(d) a statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;

(e) a full and complete statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to any judge for authorization to intercept, or for approval of interceptions of, wire, oral, or electronic communications involving any of the same persons, facilities or places specified in the application, and the action taken by the judge on each such application; and

(f) where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

(2) The judge may require the applicant to furnish additional testimony or documentary evidence in support of the application.

(3) Upon such application the judge may enter an ex parte order, as requested or as modified, authorizing or approving interception of wire, oral, or electronic

communications within the territorial jurisdiction of the court in which the judge is sitting (and outside that jurisdiction but within the United States in the case of a mobile interception device authorized by a Federal court within such jurisdiction), if the judge determines on the basis of the facts submitted by the applicant that--

(a) there is probable cause for belief that an individual is committing, has committed, or is about to commit a particular offense enumerated in section 2516 of this chapter;

(b) there is probable cause for belief that particular communications concerning that offense will be obtained through such interception;

(c) normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous;

(d) except as provided in subsection (11), there is probable cause for belief that the facilities from which, or the place where, the wire, oral, or electronic communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by such person.

(4) Each order authorizing or approving the interception of any wire, oral, or electronic communication under this chapter shall specify--

(a) the identity of the person, if known, whose communications are to be intercepted;

(b) the nature and location of the communications facilities as to which, or the place where, authority to intercept is granted;

(c) a particular description of the type of communication sought to be intercepted, and a statement of the particular offense to which it relates;

(d) the identity of the agency authorized to intercept the communications, and of the person authorizing the application; and

(e) the period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained.

An order authorizing the interception of a wire, oral, or electronic communication under this chapter shall, upon request of the applicant, direct that a provider of wire or electronic communication service, landlord, custodian or other person shall furnish the applicant forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of

interference with the services that such service provider, landlord, custodian, or person is according the person whose communications are to be intercepted. Any provider of wire or electronic communication service, landlord, custodian or other person furnishing such facilities or technical assistance shall be compensated therefor by the applicant for reasonable expenses incurred in providing such facilities or assistance. Pursuant to section 2522 of this chapter, an order may also be issued to enforce the assistance capability and capacity requirements under the Communications Assistance for Law Enforcement Act.

(5) No order entered under this section may authorize or approve the interception of any wire, oral, or electronic communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than thirty days. Such thirty-day period begins on the earlier of the day on which the investigative or law enforcement officer first begins to conduct an interception under the order or ten days after the order is entered. Extensions of an order may be granted, but only upon application for an extension made in accordance with subsection (1) of this section and the court making the findings required by subsection (3) of this section. The period of extension shall be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted and in no event for longer than thirty days. Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this chapter, and must terminate upon attainment of the authorized objective, or in any event in thirty days. In the event the intercepted communication is in a code or foreign language, and an expert in that foreign language or code is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after such interception. An interception under this chapter may be conducted in whole or in part by Government personnel, or by an individual operating under a contract with the Government, acting under the supervision of an investigative or law enforcement officer authorized to conduct the interception.

(6) Whenever an order authorizing interception is entered pursuant to this chapter, the order may require reports to be made to the judge who issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Such reports shall be made at such intervals as the judge may require.

(7) Notwithstanding any other provision of this chapter, any investigative or law enforcement officer, specially designated by the Attorney General, the Deputy Attorney General, the Associate Attorney General or by the principal prosecuting attorney of any State or subdivision thereof acting pursuant to a statute of that State, who reasonably determines that--

(a) an emergency situation exists that involves--

- www.monitoringtimes.com
- (i) immediate danger of death or serious physical injury to any person,
 - (ii) conspiratorial activities threatening the national security interest, or
 - (iii) conspiratorial activities characteristic of organized crime,

that requires a wire, oral, or electronic communication to be intercepted before an order authorizing such interception can, with due diligence, be obtained, and

(b) there are grounds upon which an order could be entered under this chapter to authorize such interception,

may intercept such wire, oral, or electronic communication if an application for an order approving the interception is made in accordance with this section within forty-eight hours after the interception has occurred, or begins to occur. In the absence of an order, such interception shall immediately terminate when the communication sought is obtained or when the application for the order is denied, whichever is earlier. In the event such application for approval is denied, or in any other case where the interception is terminated without an order having been issued, the contents of any wire, oral, or electronic communication intercepted shall be treated as having been obtained in violation of this chapter, and an inventory shall be served as provided for in subsection (d) of this section on the person named in the application.

(8) (a) The contents of any wire, oral, or electronic communication intercepted by any means authorized by this chapter shall, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of any wire, oral, or electronic communication under this subsection shall be done in such way as will protect the recording from editing or other alterations. Immediately upon the expiration of the period of the order, or extensions thereof, such recordings shall be made available to the judge issuing such order and sealed under his directions. Custody of the recordings shall be wherever the judge orders. They shall not be destroyed except upon an order of the issuing or denying judge and in any event shall be kept for ten years. Duplicate recordings may be made for use or disclosure pursuant to the provisions of subsections (1) and (2) of section 2517 of this chapter for investigations. The presence of the seal provided for by this subsection, or a satisfactory explanation for the absence thereof, shall be a prerequisite for the use or disclosure of the contents of any wire, oral, or electronic communication or evidence derived therefrom under subsection (3) of section 2517.

(b) Applications made and orders granted under this chapter shall be sealed by the judge. Custody of the applications and orders shall be wherever the judge directs. Such applications and orders shall be disclosed only upon a showing of good

cause before a judge of competent jurisdiction and shall not be destroyed except on order of the issuing or denying judge, and in any event shall be kept for ten years.

(c) Any violation of the provisions of this subsection may be punished as contempt of the issuing or denying judge.

(d) Within a reasonable time but not later than ninety days after the filing of an application for an order of approval under section 2518(7)(b) which is denied or the termination of the period of an order or extensions thereof, the issuing or denying judge shall cause to be served, on the persons named in the order or the application, and such other parties to intercepted communications as the judge may determine in his discretion that is in the interest of justice, an inventory which shall include notice of--

(1) the fact of the entry of the order or the application;

(2) the date of the entry and the period of authorized, approved or disapproved interception, or the denial of the application; and

(3) the fact that during the period wire, oral, or electronic communications were or were not intercepted.

The judge, upon the filing of a motion, may in his discretion make available to such person or his counsel for inspection such portions of the intercepted communications, applications and orders as the judge determines to be in the interest of justice. On an ex parte showing of good cause to a judge of competent jurisdiction the serving of the inventory required by this subsection may be postponed.

(9) The contents of any wire, oral, or electronic communication intercepted pursuant to this chapter or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in a Federal or State court unless each party, not less than ten days before the trial, hearing, or proceeding, has been furnished with a copy of the court order, and accompanying application, under which the interception was authorized or approved. This ten-day period may be waived by the judge if he finds that it was not possible to furnish the party with the above information ten days before the trial, hearing, or proceeding and that the party will not be prejudiced by the delay in receiving such information.

(10)(a) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, may move to suppress the contents of any wire or oral communication intercepted pursuant to this chapter, or evidence derived therefrom, on the grounds that--

(i) the communication was unlawfully intercepted;

(ii) the order of authorization or approval under which it was intercepted is insufficient on its face; or

(iii) the interception was not made in conformity with the order of authorization or approval.

Such motion shall be made before the trial, hearing, or proceeding unless there was no opportunity to make such motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire or oral communication, or evidence derived therefrom, shall be treated as having been obtained in violation of this chapter. The judge, upon the filing of such motion by the aggrieved person, may in his discretion make available to the aggrieved person or his counsel for inspection such portions of the intercepted communication or evidence derived therefrom as the judge determines to be in the interests of justice.

(b) In addition to any other right to appeal, the United States shall have the right to appeal from an order granting a motion to suppress made under paragraph (a) of this subsection, or the denial of an application for an order of approval, if the United States attorney shall certify to the judge or other official granting such motion or denying such application that the appeal is not taken for purposes of delay. Such appeal shall be taken within thirty days after the date the order was entered and shall be diligently prosecuted.

(c) The remedies and sanctions described in this chapter with respect to the interception of electronic communications are the only judicial remedies and sanctions for nonconstitutional violations of this chapter involving such communications.

(11) The requirements of subsections (1)(b)(ii) and (3)(d) of this section relating to the specification of the facilities from which, or the place where, the communication is to be intercepted do not apply if--

(a) in the case of an application with respect to the interception of an oral communication--

(i) the application is by a Federal investigative or law enforcement officer and is approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General, or an acting Assistant Attorney General;

(ii) the application contains a full and complete statement as to why such specification is not practical and identifies the person committing the offense and whose communications are to be intercepted; and

(iii) the judge finds that such specification is not practical; and

(b) in the case of an application with respect to a wire or electronic communication--

(i) the application is by a Federal investigative or law enforcement officer and is approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General, or an acting Assistant Attorney General;

(ii) the application identifies the person believed to be committing the offense and whose communications are to be intercepted and the applicant makes a showing of a purpose, on the part of that person, to thwart interception by changing facilities; and

(iii) the judge finds that such purpose has been adequately shown.

(12) An interception of a communication under an order with respect to which the requirements of subsections (1)(b)(ii) and (3)(d) of this section do not apply by reason of subsection (11) shall not begin until the facilities from which, or the place where, the communication is to be intercepted is ascertained by the person implementing the interception order. A provider of wire or electronic communications service that has received an order as provided for in subsection (11)(b) may move the court to modify or quash the order on the ground that its assistance with respect to the interception cannot be performed in a timely or reasonable fashion. The court, upon notice to the government, shall decide such a motion expeditiously.

Sec. 2519. Reports concerning intercepted wire, oral, or electronic communications

(1) Within thirty days after the expiration of an order (or each extension thereof) entered under section 2518, or the denial of an order approving an interception, the issuing or denying judge shall report to the Administrative Office of the United States Courts--

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

(b) the kind of order or extension applied for (including whether or not the order was an order with respect to which the requirements of sections 3518(1)(b)(ii) and 2518(3)(d) of this title did not apply by reason of section 2518(11) of this title);

(c) the fact that the order or extension was granted as applied for, was modified, or was denied;

(d) the period of interceptions authorized by the order, and the number and duration of any extensions of the order;

(e) the offense specified in the order or application, or extension of an order;

(f) the identity of the applying investigative or law enforcement officer and agency making the application and the person authorizing the application; and

(g) the nature of the facilities from which or the place where communications were to be intercepted.

(2) In January of each year the Attorney General, an Assistant Attorney General specially designated by the Attorney General, or the principal prosecuting attorney of a State, or the principal prosecuting attorney for any political subdivision of a State, shall report to the Administrative Office of the United States Courts--

(a) the information required by paragraphs (a) through (g) of subsection (1) of this section with respect to each application for an order or extension made during the preceding calendar year;

(b) a general description of the interceptions made under such order or extension, including (i) the approximate nature and frequency of incriminating communications intercepted, (ii) the approximate nature and frequency of other communications intercepted, (iii) the approximate number of persons whose communications were intercepted, and (iv) the approximate nature, amount, and cost of the manpower and other resources used in the interceptions;

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

(d) the number of trials resulting from such interceptions;

(e) the number of motions to suppress made with respect to such interceptions, and the number granted or denied;

(f) the number of convictions resulting from such interceptions and the offenses for which the convictions were obtained and a general assessment of the importance of the interceptions; and

(g) the information required by paragraphs (b) through (f) of this subsection with respect to orders or extensions obtained in a preceding calendar year.

(3) In April of each year the Director of the Administrative Office of the United States Courts shall transmit to the Congress a full and complete report concerning the number of applications for orders authorizing or approving the interception of wire, oral, or electronic communications pursuant to this chapter and the number of orders and extensions granted or denied pursuant to this chapter during the preceding calendar year. Such report shall include a summary and analysis of the data required to be filed with the Administrative Office by subsections (1) and (2) of this section. The Director of the Administrative Office of the United States Courts is authorized to issue binding regulations dealing with the content and form of the reports required to be filed by subsections (1) and (2) of this section.

Sec. 2520. Recovery of civil damages authorized

(a) In general.--Except as provided in section 2511(2)(a)(ii), any person whose wire, oral, or electronic communication is intercepted, disclosed, or intentionally used in violation of this chapter may in a civil action recover from the person or entity which engaged in that violation such relief as may be appropriate.

(b) Relief.--In an action under this section, appropriate relief includes--

(1) such preliminary and other equitable or declaratory relief as may be appropriate;

(2) damages under subsection (c) and punitive damages in appropriate cases; and

(3) a reasonable attorney's fee and other litigation costs reasonably incurred.

(c) Computation of damages.--(1) In an action under this section, if the conduct in violation of this chapter is the private viewing of a private satellite video communication that is not scrambled or encrypted or if the communication is 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 is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, then the court shall assess damages as follows:

(A) If the person who engaged in that conduct has not previously been enjoined under section 2511(5) and has not been found liable in a prior civil action under this

section, the court shall assess the greater of the sum of actual damages suffered by the plaintiff, or statutory damages of not less than \$50 and not more than \$500.

(B) If, on one prior occasion, the person who engaged in that conduct has been enjoined under section 2511(5) or has been found liable in a civil action under this section, the court shall assess the greater of the sum of actual damages suffered by the plaintiff, or statutory damages of not less than \$100 and not more than \$1000.

(2) In any other action under this section, the court may assess as damages whichever is the greater of--

(A) the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation; or

(B) statutory damages of whichever is the greater of \$100 a day for each day of violation or \$10,000.

(d) Defense.--A good faith reliance on--

(1) a court warrant or order, a grand jury subpoena, a legislative authorization, or a statutory authorization;

(2) a request of an investigative or law enforcement officer under section 2518(7) of this title; or

(3) a good faith determination that section 2511(3) of this title permitted the conduct complained of;

is a complete defense against any civil or criminal action brought under this chapter or any other law.

(e) Limitation.--A civil action under this section may not be commenced later than two years after the date upon which the claimant first has a reasonable opportunity to discover the violation.

Sec. 2521. Injunction against illegal interception

Whenever it shall appear that any person is engaged or is about to engage in any act which constitutes or will constitute a felony violation of this chapter, the Attorney General may initiate a civil action in a district court of the United States to enjoin such violation. The court shall proceed as soon as practicable to the hearing and determination of such an action, and may, at any time before final determination, enter such a restraining order or prohibition, or take such other action, as is warranted to prevent a continuing and substantial injury to the United

States or to any person or class of persons for whose protection the action is brought. A proceeding under this section is governed by the Federal Rules of Civil Procedure, except that, if an indictment has been returned against the respondent, discovery is governed by the Federal Rules of Criminal Procedure.

Sec. 2522. Enforcement of the Communications Assistance for Law Enforcement Act

(a) Enforcement by Court Issuing Surveillance Order.--If a court authorizing an interception under this chapter, a State statute, or the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) or authorizing use of a pen register or a trap and trace device under chapter 206 or a State statute finds that a telecommunications carrier has failed to comply with the requirements of the Communications Assistance for Law Enforcement Act, the court may, in accordance with section 108 of such Act, direct that the carrier comply forthwith and may direct that a provider of support services to the carrier or the manufacturer of the carrier's transmission or switching equipment furnish forthwith modifications necessary for the carrier to comply.

(b) Enforcement upon Application by Attorney General.--The Attorney General may, in a civil action in the appropriate United States district court, obtain an order, in accordance with section 108 of the Communications Assistance for Law Enforcement Act, directing that a telecommunications carrier, a manufacturer of telecommunications transmission or switching equipment, or a provider of telecommunications support services comply with such Act.

(c) Civil Penalty.--

(1) In General.--A court issuing an order under this section against a telecommunications carrier, a manufacturer of telecommunications transmission or switching equipment, or a provider of telecommunications support services may impose a civil penalty of up to \$10,000 per day for each day in violation after the issuance of the order or after such future date as the court may specify.

(2) Considerations.--In determining whether to impose a civil penalty and in determining its amount, the court shall take into account--

(A) the nature, circumstances, and extent of the violation;

(B) the violator's ability to pay, the violator's good faith efforts to comply in a timely manner, any effect on the violator's ability to continue to do business, the degree of culpability, and the length of any delay in undertaking efforts to comply; and

(C) such other matters as justice may require.

(d) Definitions.--As used in this section, the terms defined in section 102 of the Communications Assistance for Law Enforcement Act have the meanings provided, respectively, in such section.

From The Communications Act of 1934:

47 USC s 302a

Sec. 302a. Devices which interfere with radio reception

(a) Regulations

The Commission may, consistent with the public interest, convenience, and necessity, make reasonable regulations (1) governing the interference potential of devices which in their operation are capable of emitting radio frequency energy by radiation, conduction, or other means in sufficient degree to cause harmful interference to radio communications; and (2) establishing minimum performance standards for home electronic equipment and systems to reduce their susceptibility to interference from radio frequency energy. Such regulations shall be applicable to the manufacture, import, sale, offer for sale, or shipment of such devices and home electronic equipment and systems, and to the use of such devices.

(b) Restrictions

No person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section.

(c) Exceptions

The provisions of this section shall not be applicable to carriers transporting such devices or home electronic equipment and systems without trading in them, to devices or home electronic equipment and systems manufactured solely for export, to the manufacture, assembly, or installation of devices or home electronic equipment and systems for its own use by a public utility engaged in providing electric service, or to devices or home electronic equipment and systems for use by the Government of the United States or any agency thereof. Devices and home electronic equipment and systems for use by the Government of the United States or any agency thereof shall be developed, procured, or otherwise acquired, including offshore procurement, under United States Government criteria, standards, or specifications designed to achieve the objectives of reducing interference to radio reception and to home electronic equipment and systems, taking into account the unique needs of national defense and security.

(d) Scanning receivers of cellular telecommunication transmissions

(1) Within 180 days after October 28, 1992, the Commission shall prescribe and make effective regulations denying equipment authorization (under part 15 of title 47, Code of Federal Regulations, or any other part of that title) for any scanning receiver that is capable of--

(A) receiving transmissions in the frequencies allocated to the domestic cellular radio telecommunications service,

(B) readily being altered by the user to receive transmissions in such frequencies, or

(C) being equipped with decoders that convert digital cellular transmissions to analog voice audio.

(2) Beginning 1 year after the effective date of the regulations adopted pursuant to paragraph (1), no receiver having the capabilities described in subparagraph (A), (B), or (C) of paragraph (1), as such capabilities are defined in such regulations, shall be manufactured in the United States or imported for use in the United States.

47 USC s 605 (Section 705 of the Communications Act)

Sec. 605. Unauthorized publication or use of communications

(a) Practices prohibited

Except as authorized by chapter 119, Title 18, no person receiving, assisting in receiving, transmitting, or assisting in transmitting, any interstate or foreign communication by wire or radio shall divulge or publish the existence, contents, substance, purport, effect, or meaning thereof, except through authorized channels of transmission or reception, (1) to any person other than the addressee, his agent, or attorney, (2) to a person employed or authorized to forward such communication to its destination, (3) to proper accounting or distributing officers of the various communicating centers over which the communication may be passed, (4) to the master of a ship under whom he is serving, (5) in response to a subpoena issued by a court of competent jurisdiction, or (6) on demand of other lawful authority. No person not being authorized by the sender shall intercept any radio communication and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication to any person. No person not being entitled thereto shall receive or assist in receiving any interstate or foreign communication by radio and use such communication (or any information therein contained) for his own benefit or for the benefit of another not entitled thereto. No person having received any intercepted radio communication or having become acquainted with the contents, substance, purport, effect, or meaning of such communication (or any part thereof) knowing that such communication was intercepted, shall divulge or publish the existence, contents, substance, purport, effect, or meaning of such communication (or any part thereof) or use such communication (or any information therein contained) for his own benefit or for the benefit of another not entitled thereto. This section shall not apply to the receiving, divulging, publishing, or utilizing the contents of any radio communication which is

transmitted by any station for the use of the general public, which relates to ships, aircraft, vehicles, or persons in distress, or which is transmitted by an amateur radio station operator or by a citizens band radio operator.

(b) Exceptions

The provisions of subsection (a) of this section shall not apply to the interception or receipt by any individual, or the assisting (including the manufacture or sale) of such interception or receipt, of any satellite cable programming for private viewing if--

(1) the programming involved is not encrypted; and

(2)(A) a marketing system is not established under which--

(i) an agent or agents have been lawfully designated for the purpose of authorizing private viewing by individuals, and

(ii) such authorization is available to the individual involved from the appropriate agent or agents; or

(B) a marketing system described in subparagraph (A) is established and the individuals receiving such programming has obtained authorization for private viewing under that system.

(c) Scrambling of Public Broadcasting Service programming

No person shall encrypt or continue to encrypt satellite delivered programs included in the National Program Service of the Public Broadcasting Service and intended for public viewing by retransmission by television broadcast stations; except that as long as at least one unencrypted satellite transmission of any program subject to this subsection is provided, this subsection shall not prohibit additional encrypted satellite transmissions of the same program.

(d) Definitions

For purposes of this section--

(1) the term "satellite cable programming" means video programming which is transmitted via satellite and which is primarily intended for the direct receipt by cable operators for their retransmission to cable subscribers;

(2) the term "agent", with respect to any person, includes an employee of such person;

(3) the term "encrypt", when used with respect to satellite cable programming, means to transmit such programming in a form whereby the aural and visual characteristics (or both) are modified or altered for the purpose of preventing the unauthorized receipt of such programming by persons without authorized equipment which is designed to eliminate the effects of such modification or alteration;

(4) the term "private viewing" means the viewing for private use in an individual's dwelling unit by means of equipment, owned or operated by such individual, capable of receiving satellite cable programming directly from a satellite;

(5) the term "private financial gain" shall not include the gain resulting to any individual for the private use in such individual's dwelling unit of any programming for which the individual has not obtained authorization for that use; and

(6) the term "any person aggrieved" shall include any person with proprietary rights in the intercepted communication by wire or radio, including wholesale or retail distributors of satellite cable programming, and, in the case of a violation of paragraph (4) of subsection (e) of this section shall also include any person engaged in the lawful manufacture, distribution, or sale of equipment necessary to authorize or receive satellite cable programming.

(e) Penalties; civil actions; remedies; attorney's fees and costs; computation of damages; regulation by State and local authorities

(1) Any person who willfully violates subsection (a) of this section shall be fined not more than \$2,000 or imprisoned for not more than 6 months, or both.

(2) Any person who violates subsection (a) of this section willfully and for purposes of direct or indirect commercial advantage or private financial gain shall be fined not more than \$50,000 or imprisoned for not more than 2 years, or both, for the first such conviction and shall be fined not more than \$100,000 or imprisoned for not more than 5 years, or both, for any subsequent conviction.

(3)(A) Any person aggrieved by any violation of subsection (a) of this section or paragraph (4) of this subsection of this section may bring a civil action in a United States district court or in any other court of competent jurisdiction.

(B) The court--

(i) may grant temporary and final injunctions on such terms as it may deem reasonable to prevent or restrain violations of subsection (a) of this section;

(ii) may award damages as described in subparagraph (C); and

(iii) shall direct the recovery of full costs, including awarding reasonable attorneys' fees to an aggrieved party who prevails.

(C)(i) Damages awarded by any court under this section shall be computed, at the election of the aggrieved party, in accordance with either of the following subclauses;

(I) the party aggrieved may recover the actual damages suffered by him as a result of the violation and any profits of the violator that are attributable to the violation which are not taken into account in computing the actual damages; in determining the violator's profits, the party aggrieved shall be required to prove only the violator's gross revenue, and the violator shall be required to prove his deductible expenses and the elements of profit attributable to factors other than the violation; or

(II) the party aggrieved may recover an award of statutory damages for each violation of subsection (a) of this section involved in the action in a sum of not less than \$1,000 or more than \$10,000, as the court considers just, and for each violation of paragraph (4) of this subsection involved in the action an aggrieved party may recover statutory damages in a sum not less than \$10,000, or more than \$100,000, as the court considers just.

(ii) In any case in which the court finds that the violation was committed willfully and for purposes of direct or indirect commercial advantage or private financial gain, the court in its discretion may increase the award of damages, whether actual or statutory, by an amount of not more than \$100,000 for each violation of subsection (a) of this section.

(iii) In any case where the court finds that the violator was not aware and had no reason to believe that his acts constituted a violation of this section, the court in its discretion may reduce the award of damages to a sum of not less than \$250.

(4) Any person who manufactures, assembles, modifies, imports, exports, sells, or distributes any electronic, mechanical, or other device or equipment, knowing or having reason to know that the device or equipment is primarily of assistance in the unauthorized decryption of satellite cable programming, or is intended for any other activity prohibited by subsection (a) of this section, shall be fined not more than \$500,000 for each violation, or imprisoned for not more than 5 years for each violation, or both. For purposes of all penalties and remedies established for violations of this paragraph, the prohibited activity established herein as it applies to each such device shall be deemed a separate violation.

(5) The penalties under this subsection shall be in addition to those prescribed under any other provision of this subchapter.

(6) Nothing in this subsection shall prevent any State, or political subdivision thereof, from enacting or enforcing any laws with respect to the importation, sale, manufacture, or distribution of equipment by any person with the intent of its use to assist in the interception or receipt of radio communications prohibited by subsection (a) of this section.

(f) Rights, obligations, and liabilities under other laws unaffected

Nothing in this section shall affect any right, obligation, or liability under Title 17, any rule, regulation, or order thereunder, or any other applicable Federal, State or local law.

(g) Universal encryption standard

The Commission shall initiate an inquiry concerning the need for a universal encryption standard that permits decryption of satellite cable programming intended for private viewing. In conducting such inquiry, the Commission shall take into account--

(1) consumer costs and benefits of any such standard, including consumer investment in equipment in operation;

(2) incorporation of technological enhancements, including advanced television formats;

(3) whether any such standard would effectively prevent present and future unauthorized decryption of satellite cable programming;

(4) the costs and benefits of any such standard on other authorized users of encrypted satellite cable programming, including cable systems and satellite master antenna television systems;

(5) the effect of any such standard on competition in the manufacture of decryption equipment; and

(6) the impact of the time delay associated with the Commission procedures necessary for establishment of such standards.

(h) Rulemaking for encryption standard

If the Commission finds, based on the information gathered from the inquiry required by subsection (g) of this section, that a universal encryption standard is necessary and in the public interest, the Commission shall initiate a rulemaking to establish such a standard.

Comment:

Sections 2510-21 of the Federal Criminal Statutes (18 U.S.C.) were amended by the Electronic Communications Privacy Act on 1986 (ECPA) to make the mere act of listening to certain radio transmissions a federal crime. This was done in reaction to federal court decisions such as *Edwards v. Bardwell*, 632 F.Supp. 584 (M.D. Louisiana, 1986) and *United States v. Hoffa*, 436 F.2d 1243 (7th Cir.1970) cert. den., 400 U.S. 1000, 91 S.Ct. 455, 457, 27 L.Ed.2d 451 (1971), where the court held that "there was no expectation of privacy in the ... calls ... which were exposed to everyone in that area who possessed an F.M. radio receiver or another automobile telephone tuned in to the same channel."

Congress, at the request of the cellular telephone industry, reacted to this line of cases by enacting a statute which starts out by saying that it is illegal to intentionally intercept, disclose or use the contents of any wire or electronic communication. An electronic communication includes all radio transmissions except for communications to pagers or tracking devices. Initially, cordless telephone conversations were not included in the definition of an "electronic communication." That anomaly has now been removed.

After making a blanket prohibition of intercepting all electronic (i.e., radio) transmissions, the statute lists the exceptions. The first exception is that it is legal to listen to all radio transmissions which are "readily accessible to the general public." This term used to be defined in the statute to mean radio signals which are (1) not encrypted, scrambled, carried on a subcarrier or other signal subsidiary to a radio transmission; (2) not transmitted over a common carrier communications system (such as the phone company); (3) not special transmissions such as point-to-point private relay transmissions for the broadcast services, not meant for reception by the general public.

However, on October 25, 1994, Public Law 103-414 was enacted. This law amended the ECPA to provide equal treatment to cordless telephone conversations as cellular ones. However, it also amended the definition of "readily accessible to the general public" to exclude all "electronic communications." As noted above, electronic communications include virtually all radio communications. And so, as the law now stands, there is virtually no radio communication that is "readily accessible to the general public." In essence, the lawmakers have closed up tight this most useful exception to the general rule.

The federal government has cracked down hard on radio listening. At this point the only legal listening outside the broadcast bands is:

- www.monitoringtimes.com
- (a) a communication relating to ships, aircraft, vehicles or persons in distress;
 - (b) a broadcast by any governmental, law enforcement, civil defense, private land mobile or public safety communications system, including police and fire;
 - (c) transmissions on the amateur bands, citizens band or general mobile radio services as well as any marine or aeronautical communications system;
 - (d) satellite transmissions of cable programming as long as the transmission is not encrypted, there is no monetary gain by the viewer, and there is no marketing system available (meaning no one is selling the rights to view the programming via satellite).
 - (e) a radio transmission which is causing interference with any lawfully operating station (including ham radio operators), or is causing interference with any consumer electronic equipment, to the extent necessary to identify the source of the interference.

What if you are tuning around your general coverage receiver and come upon something not contained on the federal "approved listening" list? In order for a prosecution under 18 U.S.C. 2511 to be successful, the government must prove beyond a reasonable doubt that the listener intentionally intercepted a protected transmission. Since even attorneys are unsure what frequencies are off limits, how can the government hope to prove that a listener who happens upon one of these federally-legislated minefields in the radio spectrum, actually intended to do so? In fact, the Senate Judiciary Committee report on the ECPA states flat out that "the inadvertent interception of a protected communication is not unlawful under this Act." (Senate Report 99-541) Case law appears to bear this out. In *United States v. Townsend*, 987 F.2d 927 (2nd Cir. 1993), the court said that the word "intentionally" in the ECPA means that a jury must find that the defendant acted purposefully and the defendant's act must have been the product of the defendant's conscious objective, rather than a product of mistake or accident.

It should be noted that section 705 of the Communications Act of 1934 (codified as 47 U.S.C. §605) has not been repealed by the ECPA. It is still illegal, as it has been since 1912, to divulge the existence or contents of any transmission except for general broadcast stations, amateur radio and CB transmissions, and transmissions relating to ships, aircraft, vehicles or persons in distress. In a 1987 case (*Edwards v. State Farm Insurance Co.*, 833 F.2d 535 (5th Cir. 1987)) the court concluded that in order to prove an offense under this statute, the speaker must have held a subjective expectation of privacy that was justifiable under the circumstances. This principle was also set forth in *United States v. Basey*, 816 F.2d 980 (5th Cir. 1987), where the Court said: "Apart from specific statutory protections, there is no reasonable expectation of privacy in broadcasts over the public airwaves which are exposed to everyone in the area having a radio tuned to the same nonexclusive channel."

Although there have been no fundamental changes in Section 705 of the Communications Act, in Public Law 102-556 Congress recently added to another section of the Communication Act (codified at 47 U.S.C. _302a) to prohibit the manufacture or importation of "any scanning receiver that is capable of-

(A) receiving transmissions in the frequencies allocated to the domestic cellular radio telecommunications service,

(B) readily being altered by the user to receive transmissions in such frequencies, or

(C) being equipped with decoders that convert digital cellular transmissions to analog voice audio."

Based on the recent enactments in two consecutive Congresses of P.L. 102-556 and P.L. 103-414, I don't believe that it would be paranoia to think that someone in Washington has it in for radio hobbyists.

As for the other provisions of the ECPA, there is very little case law to be found construing the radio provisions of these statutes. Interestingly, most of the reported litigation deals with Section 2512, which prohibits the manufacture, distribution, possession and advertising of devices "primarily useful for the purpose of the surreptitious interception of wire, oral, or electronic communications." In *United States v. Bast*, 495 F.2d 138 (D.C. Cir. 1974), the Court said that the words "surreptitious interception" means secret listening and the fact that a device may be used for that purpose is not enough to ban it under 18 U.S.C. 2512. It must be "primarily useful" for that purpose.

The meaning of the words, "primarily useful" has been at the heart of most litigation in this area. In *U.S. v. Bast* the Court said that the phrase was "intended to establish a relatively narrow category of devices whose principal use is likely to be for wiretapping or eavesdropping. A device will not escape the prohibition merely because it may have innocent uses. The crucial test is whether the design of the device renders it primarily useful for surreptitious listening." The Court listed objectionable devices such as the martini olive transmitter and a microphone disguised as a cuff link, fountain pen, wristwatch or cigarette pack. This view of the phrase "primarily useful", based on the Senate Report of the original wiretap bill (S.Rep. No. 1097, 90th Congress, 2d Session, pp. 94-95) was also adopted by the Courts in *Flowers v. Tandy Corp.*, 773 F.2d 585 (4th Cir. 1985) and *United States v. Wynn*, 633 F.Supp. 595 (C.D. Ill. 1986). Clearly, these Courts would not view a scanner with cellular telephone coverage as "primarily useful" for "surreptitious interception" since it has many other legal uses. In fact, in FCC Docket No. 88-281, the Federal Communications Commission declined to restrict the sale of radios which receive cellular telephone frequencies, noting that there are other unprotected communications on those frequencies as well. Proponents of radio sale restrictions got around that by forcing the FCC's hand with P.L. 102-556.

As a sort of poetic justice, two cellular telephone companies have recently had to defend lawsuits claiming that they are violating the ECPA by broadcasting private telephone conversations unscrambled so that everyone could listen in. In both *Shubert v. Metrophone, Inc.*, Docket No. 89-1966 (E.D. Pa. July 13, 1989) and *Margiotti v. Bell Atlantic*, Docket No. 89-1967 (E.D. Pa. September 5, 1989), the plaintiffs claimed that the cellular telephone companies violated the ECPA. The Court in Shubert, in denying these claims, stated that the word "interception" as used in Section 2511 "connotes a situation in which by surreptitious means a third party overhears a telephone conversation between two persons." In *Margiotti*, the Court added: "The act of transmitting communications over radio frequencies does not, in and of itself, divulge the contents of such communications to a non-intended recipient. The eavesdropping third party must act intentionally and independently of the communications provider in order to listen in on the communication, and such eavesdropping conduct is illegal."

It should be noted that many states have now enacted local versions of the ECPA. These state ECPA implementations do not stray far from the federal language, and they are not included here.

CALIFORNIA:

Penal Code _ 632.5

s 632.5. Cellular radio telephone interceptions; application of section

(a) Every person who, maliciously and without the consent of all parties to the communication, intercepts, receives, or assists in intercepting or receiving a communication transmitted between cellular radio telephones or between any cellular radio telephone and a landline telephone shall be punished by a fine not exceeding two thousand five hundred dollars (\$2,500), by imprisonment in the county jail not exceeding one year or in the state prison, or by both that fine and imprisonment. If the person has been previously convicted of a violation of this section or Section 631, 632, 632.6, 632.7, or 636, the person shall be punished by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment in the county jail not exceeding one year or in the state prison, or by both that fine and imprisonment.

(b) In the following instances, this section shall not apply:

(1) To any public utility engaged in the business of providing communications services and facilities, or to the officers, employees, or agents thereof, where the acts otherwise prohibited are for the purpose of construction, maintenance, conduct, or operation of the services and facilities of the public utility.

(2) To the use of any instrument, equipment, facility, or service furnished and used pursuant to the tariffs of the public utility.

(3) To any telephonic communication system used for communication exclusively within a state, county, city and county, or city correctional facility.

(c) As used in this section and Section 635, "cellular radio telephone" means a wireless telephone authorized by the Federal Communications Commission to operate in the frequency bandwidth reserved for cellular radio telephones.

Comment:

The legislative history of this statute is tremendously helpful in determining the intention of the California lawmakers.

Sections 1 and 2 of Stats. 1985, c. 909, provide:

"Section 1. This act shall be known and may be cited as the Cellular Radio Telephone Privacy Act of 1985.

Sec. 2. The Legislature finds that the advent of widespread use of cellular radio telephone technology means that persons will be conversing over a network which cannot guarantee privacy in the same way that it is guaranteed over landline systems.

The Legislature further finds that there is, at present, no commercially feasible method to prevent unauthorized third parties from eavesdropping upon private cellular radio telephone communications.

The Legislature also finds that the right of privacy has been established under present law in order to prevent the continued and increasing use of new technological devices and techniques suitable only for eavesdropping upon private conversations.

Therefore, the Legislature declares that parties to a cellular radio telephone communication have a right of privacy in that communication, and that this act is intended to provide a legal recourse to those persons whose private cellular radio telephone communications have been maliciously invaded by persons not intended to receive such communication.

It is not the intent of the Legislature to prohibit the manufacture, sale, possession, or use of electronic scanning devices, or radios, capable of intercepting or receiving radio frequencies other than or in addition to cellular radio frequencies, nor to prohibit the interception or reception of radio frequencies other than the unauthorized malicious interception or reception of cellular radio frequencies."

As the last paragraph above indicates, this statute was not intended to outlaw scanners in any way. It outlaws only the malicious interception of cellular radio frequencies. Mere listening, without further action, stands very little chance of reaching the level of maliciousness.

Penal Code _ 632.6

s 632.6. Cordless or cellular telephones; interception or receipt of communications without consent; punishment; exceptions

(a) Every person who, maliciously and without the consent of all parties to the communication, intercepts, receives, or assists in intercepting or receiving a communication transmitted between cordless telephones as defined in subdivision (c), between any cordless telephone and a landline telephone, or between a cordless telephone and a cellular telephone shall be punished by a fine not exceeding two thousand five hundred dollars (\$2,500), by imprisonment in the county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment. If the person has been convicted previously of a violation of Section 631, 632, 632.5, 632.7, or 636, the person shall be punished by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment in the county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment.

(b) This section shall not apply in any of the following instances:

(1) To any public utility engaged in the business of providing communications services and facilities, or to the officers, employees, or agents thereof, where the

acts otherwise prohibited are for the purpose of construction, maintenance, conduct, or operation of the services and facilities of the public utility.

(2) To the use of any instrument, equipment, facility, or service furnished and used pursuant to the tariffs of the public utility.

(3) To any telephonic communications system used for communication exclusively within a state, county, city and county, or city correctional facility.

(c) As used in this section and in Section 635, "cordless telephone" means a two-way low power communication system consisting of two parts--a "base" unit which connects to the public switched telephone network and a handset or "remote" unit--which are connected by a radio link and authorized by the Federal Communications Commission to operate in the frequency bandwidths reserved for cordless telephones.

Penal Code _ 632.7

s 632.7. Cordless or cellular radio telephones; intentional recordation of communications without consent; punishment; exceptions

(a) Every person who, without the consent of all parties to a communication, intercepts or receives and intentionally records, or assists in the interception or reception and intentional recordation of, a communication transmitted between two cellular radio telephones, a cellular radio telephone and a landline telephone, two cordless telephones, a cordless telephone and a landline telephone, or a cordless telephone and a cellular radio telephone, shall be punished by a fine not exceeding two thousand five hundred dollars (\$2,500), or by imprisonment in a county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment. If the person has been convicted previously of a violation of this section or of Section 631, 632, 632.5, 632.6, or 636, the person shall be punished by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment in a county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment.

(b) This section shall not apply to any of the following:

(1) Any public utility engaged in the business of providing communications services and facilities, or to the officers, employees, or agents thereof, where the acts otherwise prohibited are for the purpose of construction, maintenance, conduct, or operation of the services and facilities of the public utility.

(2) The use of any instrument, equipment, facility, or service furnished and used pursuant to the tariffs of the public utility.

(3) Any telephonic communication system used for communication exclusively within a state, county, city and county, or city correctional facility.

(c) As used in this section, each of the following terms have the following meaning:

(1) "Cellular radio telephone" means a wireless telephone authorized by the Federal Communications Commission to operate in the frequency bandwidth reserved for cellular radio telephones .

(2) "Cordless telephone" means a two-way, low power communication system consisting of two parts, a "base" unit which connects to the public switched

telephone network and a handset or "remote" unit, that are connected by a radio link and authorized by the Federal Communications Commission to operate in the frequency bandwidths reserved for cordless telephones.

(3) "Communication" includes, but is not limited to, communications transmitted by voice, data, or image, including facsimile.

Comment:

These sections were enacted on September 10, 1990 in response to the failure of the U.S. Supreme Court to find privacy protection for cordless telephones. The Act contained the following introductory language, which is useful in interpreting its purpose:

"Sec. 1. This act shall be known and may be cited as the Cordless and Cellular Radio Telephone Privacy Act.

Sec. 2. The Legislature hereby finds and declares all of the following: (a) Increasing utilization of cordless telephone technology means that persons will be conversing using a technology which cannot guarantee privacy in the same way that it is guaranteed over the wire-based public switched network. (b) The United States Supreme Court has failed to guarantee persons a reasonable expectation of privacy in conversations made with or to a person using a cordless telephone unit. (c) There is currently no commercially feasible method to prevent unauthorized third parties from eavesdropping upon private cordless telephone communications. (d) A citizen's right of privacy should protect him or her from sophisticated forms of surveillance and eavesdropping that use new technological devices and techniques suitable only for appropriating private conversations.

(e) Parties to a cordless telephone communication have a reasonable expectation of privacy which the right of privacy protects, and this act is intended to provide a legal recourse to those persons whose private cordless telephone communications have been maliciously invaded by persons not intended to receive those communications.

(f) It is not the intent of the Legislature in enacting this act to prohibit the manufacture, sale, possession, or use of electronic scanning devices, or radios capable of intercepting or receiving radio frequencies other than, or in addition to, cordless telephone radio frequencies, nor is it the Legislature's intent to prohibit the interception or reception of radio frequencies other than the unauthorized malicious interception or reception of cordless telephone radio frequencies."

Penal Law _ 633

s 633. Law enforcement officers; authorized use of electronic, etc., equipment

Nothing in Section 631, 632, 632.5, 632.6, or 632.7 prohibits the Attorney General, any district attorney, or any assistant, deputy, or investigator of the Attorney General or any district attorney, any officer of the California Highway Patrol, any chief of police, assistant chief of police, or police officer of a city or city and county, any sheriff, undersheriff, or deputy sheriff regularly employed and paid in that capacity by a county, or any person acting pursuant to the direction of one of these law enforcement officers acting within the scope of his or her authority, from overhearing or recording any communication that they could lawfully overhear or record prior to the effective date of this chapter. Nothing in Section 631, 632, 632.5, 632.6, or 632.7 renders inadmissible any evidence obtained by the above-named persons by means of overhearing or recording any communication that they could lawfully overhear or record prior to the effective date of this chapter.

Penal Law _ 633.1

s 633.1. Airport law enforcement officer telephone call; recording; admissibility of evidence; application of section

(a) Nothing in Section 631, 632, 632.5, 632.6, or 632.7 prohibits any person regularly employed as an airport law enforcement officer, as described in subdivision (k) of Section 830.4, acting within the scope of his or her authority, from recording any communication which is received on an incoming telephone line, for which the person initiating the call utilized a telephone number known to the public to be a means of contacting airport law enforcement officers. In order for a telephone call to be recorded under this subdivision, a series of electronic tones shall be used, placing the caller on notice that his or her telephone call is being recorded.

(b) Nothing in Section 631, 632, 632.5, 632.6, or 632.7 renders inadmissible any evidence obtained by an officer described in subdivision (a) if the evidence was received by means of recording any communication which is received on an incoming public telephone line, for which the person initiating the call utilized a telephone number known to the public to be a means of contacting airport law enforcement officers.

(c) This section shall only apply to airport law enforcement officers who are employed at an airport which maintains regularly scheduled international airport service and which maintains permanent facilities of the United States Customs Service.

Penal Law _ 633.5

s 633.5. Recording communications relating to commission of extortion, kidnapping, bribery, felony involving violence against the person, or violation of s 653m

Nothing in Section 631, 632, 632.5, 632.6, or 632.7 prohibits one party to a confidential communication from recording the communication for the purpose of obtaining evidence reasonably believed to relate to the commission by another party to the communication of the crime of extortion, kidnapping, bribery, any felony involving violence against the person, or a violation of Section 653m. Nothing in Section 631, 632, 632.5, 632.6, or 632.7 renders any evidence so obtained inadmissible in a prosecution for extortion, kidnapping, bribery, any felony involving violence against the person, a violation of Section 653m, or any crime in connection therewith.

Penal Law _ 634

s 634. Trespass for the purpose of committing prohibited acts; punishment

Any person who trespasses on property for the purpose of committing any act, or attempting to commit any act, in violation of Section 631, 632, 632.5, 632.6, 632.7, or 636 shall be punished by a fine not exceeding two thousand five hundred dollars (\$2,500), by imprisonment in the county jail not exceeding one year or in the state prison, or by both that fine and imprisonment. If the person has previously been convicted of a violation of this section or Section 631, 632, 632.5, 632.6, 632.7, or 636, the person shall be punished by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment in the county jail not exceeding one year or in the state prison, or by both that fine and imprisonment.

Penal Code _ 635

s. 635. Manufacture, sale and possession of eavesdropping devices; punishment; recidivists; exceptions

(a) Every person who manufactures, assembles, sells, offers for sale, advertises for sale, possesses, transports, imports, or furnishes to another any device which is primarily or exclusively designed or intended for eavesdropping upon the communication of another, or any device which is primarily or exclusively designed or intended for the unauthorized interception or reception of communications between cellular radio telephones or between a cellular radio telephone and a landline telephone in violation of Section 632.5, or communications between cordless telephones or between a cordless telephone and a landline telephone in violation of Section 632.6, shall be punished by a fine not exceeding two thousand five hundred dollars (\$2,500), by imprisonment in the county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment. If the person has previously been convicted of a violation of this section, the person shall be punished by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment in the county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment.

(b) This section does not apply to either of the following:

(1) An act otherwise prohibited by this section when performed by any of the following:

(A) A communication utility or an officer, employee or agent thereof for the purpose of construction, maintenance, conduct, or operation of, or otherwise incident to the use of, the services or facilities of the utility .

(B) A state, county, or municipal law enforcement agency or an agency of the federal government .

(C) A person engaged in selling devices specified in subdivision (a) for use by, or resale to, agencies of a foreign government under terms approved by the federal government, communication utilities, state, county, or municipal law enforcement agencies, or agencies of the federal government.

(2) Possession by a subscriber to communication utility service of a device specified in subdivision (a) furnished by the utility pursuant to its tariffs.

Penal Law _ 636

s 636. Eavesdropping or recording conversation between prisoner and his attorney, clergyman or physician; offense; exception

Every person, who, without permission from all parties to the conversation, eavesdrops on or records by means of an electronic or other device, a conversation, or any portion thereof, between a person who is in the physical custody of a law enforcement officer or other public officer, or who is on the property of a law enforcement agency or other public agency, and such person's attorney, religious advisor, or licensed physician, is guilty of a felony; provided, however, the provisions of this section shall not apply to any employee of a public utility engaged in the business of providing service and facilities for telephone or telegraph communications while engaged in the construction, maintenance, conduct or operation of the service or facilities of such public utility who listens in to such conversations for the limited purpose of testing or servicing such equipment.

Penal Law _ 636.5

s 636.5. Police radio communications; prohibited interceptions; penalty

Any person not authorized by the sender, who intercepts any police radio service communication, by use of a scanner or any other means, for the purpose of using that communication to assist in the commission of a criminal offense or to avoid or escape arrest, trial, conviction, or punishment or who divulges to any person he or she knows to be a suspect in the commission of any criminal offense, the existence, contents, substance, purport, effect or meaning of that communication concerning the offense with the intent that the suspect may avoid or escape from arrest, trial, conviction, or punishment is guilty of a misdemeanor.

Nothing in this section shall preclude prosecution of any person under Section 31 or 32.

As used in this section "police radio service communication" means a

communication authorized by the Federal Communications Commission to be transmitted by a station in the police radio service.

Comment:

This section is the main area of interest for scanner owners. It prohibits only the improper use of information obtained from a police communication. There is no prohibition of the mere act of listening, nor is there any prohibition of divulging information obtained, except to a suspect of a crime.

FLORIDA:

FL ST _ 843.16

843.16. Unlawful to install radio equipment using assigned frequency of state or law enforcement officers; definitions; exceptions; penalties

(1) No person, firm, or corporation shall install in any motor vehicle or business establishment, except an emergency vehicle or crime watch vehicle as herein defined or a place established by municipal, county, state, or federal authority for governmental purposes, any frequency modulation radio receiving equipment so adjusted or tuned as to receive messages or signals on frequencies assigned by the Federal Communications Commission to police or law enforcement officers of any city or county of the state or to the state or any of its agencies. Provided, nothing herein shall be construed to affect any radio station licensed by the Federal Communications System or to affect any recognized newspaper or news publication engaged in covering the news on a full-time basis or any alarm system contractor certified pursuant to part II of chapter 489, operating a central monitoring system.

(2) As used in this section, the term:

(a) "Emergency vehicle" shall specifically mean:

1. Any motor vehicle used by any law enforcement officer or employee of any city, any county, the state, the Federal Bureau of Investigation, or the Armed Forces of the United States while on official business;

2. Any fire department vehicle of any city or county of the state or any state fire department vehicle;

3. Any motor vehicle designated as an emergency vehicle by the Department of Highway Safety and Motor Vehicles when said vehicle is to be assigned the use of frequencies assigned to the state;

4. Any motor vehicle designated as an emergency vehicle by the sheriff of any county in the state when said vehicle is to be assigned the use of frequencies assigned to the said county;

5. Any motor vehicle designated as an emergency vehicle by the chief of police of any city in the state when said vehicle is to be assigned the use of frequencies assigned to the said city.

(b) "Crime watch vehicle" means any motor vehicle used by any person participating in a citizen crime watch or neighborhood watch program when such program and use are approved in writing by the appropriate sheriff or chief of police where the vehicle will be used and the vehicle is assigned the use of frequencies assigned to the county or city. Such approval shall be renewed annually.

(3) This section shall not apply to any holder of a valid amateur radio operator or station license issued by the Federal Communications Commission or to any recognized newspaper or news publication engaged in covering the news on a full-time basis or any alarm system contractor certified pursuant to part II of chapter 489, operating a central monitoring system.

(4) Any person, firm, or corporation violating any of the provisions of this section shall be deemed guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Comment:

This law prohibits the installation in a motor vehicle or place of business of an FM radio tuned to receive police communications. There are exemptions for emergency vehicles, crime watch vehicles, amateur radio operators, and governmental users, among others. The Attorney General of Florida has issued an opinion which states that under this section the word "install" applies to a vehicular installation when (1) the unit is connected to and dependent upon the electrical power system of the vehicle; and (2) the unit is connected to an external antenna capable of receiving police broadcasts. Op.Atty.Gen., 074-369, Dec. 4, 1974. A subsequent opinion, dated July 21, 1989 (89-44), reiterated the fact that while radio and television stations were exempt from the law, as it existed then, other journalists were not. As a result of this decision, the Legislature amended the law effective October 1, 1990 to specifically exempt news organizations and alarm system contractors who operate a central monitoring system.

INDIANA

IN ST _ 35-44-3-12

Section 35-44-3-12: Unlawful use of a police radio; exemptions; "police radio" defined

- (a) A person who knowingly or intentionally:
- (1) possesses a police radio;
 - (2) transmits over a frequency assigned for police emergency purposes; or (3) possesses or uses a police radio:
 - (A) while committing a crime;
 - (B) to further the commission of a crime; or
 - (C) to avoid detection by a law enforcement agency;commits unlawful use of a police radio, a Class B misdemeanor.
- (b) Subsection (a)(1) and (a)(2) do not apply to:
- (1) a governmental entity;
 - (2) a regularly employed law enforcement officer;
 - (3) a common carrier of persons for hire whose vehicles are used in emergency service;
 - (4) a public service or utility company whose vehicles are used in emergency service;
 - (5) a person who has written permission from the chief executive officer of a law enforcement agency to possess a police radio;
 - (6) a person who holds an amateur radio license issued by the Federal Communications Commission if the person is not transmitting over a frequency assigned for police emergency purposes;
 - (7) a person who uses a police radio only in the person's dwelling or place of business;
 - (8) a person:
 - (A) who is regularly engaged in newsgathering activities;
 - (B) who is employed by a newspaper qualified to receive legal advertisements under IC 5-3-1, a wire service, or a licensed commercial or public radio or television station; and
 - (C) whose name is furnished by his employer to the chief executive officer of a law enforcement agency in the county in which the employer's principal office is located;
 - (9) a person engaged in the business of manufacturing or selling police radios; or
 - (10) a person who possesses or uses a police radio during the normal course of the person's lawful business.
- (c) As used in this section, "police radio" means a radio that is capable of sending or receiving signals transmitted on frequencies assigned by the Federal Communications Commission for police emergency purposes and that:
- (1) can be installed, maintained, or operated in a vehicle; or
 - (2) can be operated while it is being carried by an individual.

The term does not include a radio designed for use only in a dwelling.

Comment:

This law prohibits the mere possession of portable scanners, and lists exemptions. The statute defines portable scanners to be any radios, capable of receiving police communications, which can be operated in a vehicle. The statute does not prohibit the possession or use of base scanners. This law was construed in *Wallman v. State*, 419 N.E.2d 1346 (1981). The Court found that the section was sufficiently clear and definite to prohibit possession of portable radios capable of receiving vocal police radio communications. However, the Court found that the statute was too vague to prohibit the possession of a portable radar detection device.

KENTUCKY:

KY ST _ 432.570

s 432.570 Possession or use of radio capable of sending or receiving police messages restricted -- Penalty -- Enforcement.

(1) It shall be unlawful for any person except a member of a police department or police force or an official with written authorization from the head of a department which regularly maintains a police radio system authorized or licensed by the Federal Communications Commission, to have in his or her possession, or in an automobile or other vehicle, or to equip or install in or on any automobile or other vehicle, any mobile radio set or apparatus capable of either receiving or transmitting radio or other messages or signals within the wave length or channel now or which may hereafter be allocated by the Federal Communications Commission, or its successor, for the purpose of police radios, or which may in any way intercept or interfere with the transmission of radio messages by any police or other peace officers. It shall be unlawful for any car, automobile, or other vehicle other than one publicly owned and entitled to an official license plate issued by the state issuing a license for the car, to have, or be equipped with the sets or apparatus even though the car is owned by an officer. This section shall not apply to any automobile or vehicle owned or operated by a member of a sheriff's department authorized by the fiscal court to operate a radio communications system that is licensed by the Federal Communications Commission or other federal agency having the authority to license same.

Nothing in this section shall preclude a probation and parole officer employed by the Department of Corrections from carrying on his person or in a private vehicle while conducting his official duties an authorized, state- issued portable radio apparatus capable of transmitting or receiving signals.

(2) Any person guilty of violating any of the provisions of this section shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than fifty dollars (\$50) and not exceeding five hundred dollars (\$500), or imprisonment not exceeding twelve (12) months, or both so fined and imprisoned.

(3) It shall be the duty of any and all peace officers to seize and hold for evidence any and all equipment had or used in violation of the provisions of this section, and, upon conviction of the person having, equipping or using such equipment, it shall be the duty of the trial court to order such equipment or apparatus destroyed, forfeited, or escheated to the Commonwealth of Kentucky, and said property may be ordered destroyed, forfeited, or escheated as above provided without a conviction of the person charged with violating this section.

(4) Nothing contained in this section shall prohibit the possession of a radio by:

(a) An individual who is a retailer or wholesaler and in the ordinary course of his business offers such radios for sale or resale;

(b) A commercial or educational radio or television station, licensed by the Federal Communications Commission, at its place of business; or

(c) An individual who possesses such a radio, provided it is capable of receiving radio transmissions only and is not capable of sending or transmitting radio messages, at his place of residence; licensed commercial auto towing trucks; newspaper reporters and photographers; disaster and emergency services personnel authorized in writing by the state director of disaster and emergency service (for state personnel) or chief executive of the city or county (for their respective personnel); a person holding a valid license issued by the Federal Communications Commission in the amateur radio service; peace officers authorized in writing by the head of their law enforcement agency, Commonwealth's attorneys and their assistants, county attorneys and their assistants, except that it shall be unlawful to use such radio to facilitate any criminal activity or to avoid apprehension by law enforcement officers.

Violation of this section shall, in addition to any other penalty prescribed by law, result in a forfeiture to the local law enforcement agency of such radio.

(5) The secretary of the Finance and Administration Cabinet is hereby empowered by issuance of a secretary's order to exempt from the prohibitions and penalties of this section the possession and use of any and all radio communication equipment that he finds is necessary to be owned and used by members of the general public and other nonpolice persons for utilization in the N.O.A.A. weather radio system.

Comment:

This is without a doubt the most restrictive monitoring law in all 50 states. It outlaws the mere possession of radios capable of receiving police communications not only in automobiles, but practically anywhere. Until it was recently amended to exempt amateur radio operators, under a plain reading of this statute, all ham transceivers were illegal in the State of Kentucky. There are several other exemptions granted in Section (4) of the statute. The most important of these is that this statute permits the possession of a radio capable only of receiving police transmissions at the place of residence of an individual.

The Attorney General of Kentucky has been kept very busy for years issuing opinions construing this statute. There have been more than a dozen formal opinions. From these opinions, we are informed that members of the organization known as REACT whose vehicles are equipped with radios capable of receiving police communications are in violation of this section. OAG 70-368. It is immaterial whether or not a radio set in an automobile is connected. OAG 72-817. As used in subsection (1) of this section in the phrase "any mobile radio set or apparatus" the term "mobile" modifies "radio set" only, not "apparatus" and thus the use or possession of any radio, whether it be mobile or stationary, capable of receiving police communications is prohibited. OAG 76-92. The term "capable" as used in the first sentence of subsection (1) of this section would include a radio set that may be converted by various simple adjustments to receive police broadcasts. OAG 74-888. The term "mobile" does not exclude a radio set utilized in a home, regardless of the source of power or method of installation. OAG 74-888. This section is

impermissibly vague as applied to radar detectors because it does not adequately indicate the use of radar detectors within the existing prohibition protecting the effectiveness of essential police radio communications. OAG 79-154. Safety and security departments of public institutions of higher education may install, maintain, and operate radio systems on police or other radio frequencies. KRS s 164.970

Maine:

ME ST T. 17 s 3962

s 3962. Regulation of radio waves; disturbing reception

It shall be unlawful to use any radio receiving set which radiates radio waves between 200 meters wave length and 550 meters wave length which causes interference with the reception of any other radio receiving set. Whoever knowingly, maliciously or wantonly by any means unreasonably disturbs the reception of radio waves used for radiotelephony, between 200 meters wave length and 550 meters wave length, shall be punished by a fine of not less than \$10 nor more than \$50, to be recovered by complaint in the District Court.

Comment:

This is a curious little law whose purpose seems to be to protect the AM broadcast band from interference from radio receivers. I have seen no reported case of its use.

MICHIGAN:

Penal Code _ 750.508

750.508. Vehicles equipped with short wave length radio receiving sets

(1) Any person who shall equip a vehicle with a radio receiving set that will receive signals sent on frequencies assigned by the federal communications commission of the United States of America for police purposes, or use the same in this state unless such vehicle is used or owned by a peace officer, or a bona fide amateur radio operator holding a technician class, general, advanced, or extra class amateur license issued by the federal communications commission, without first securing a permit so to do from the director of the department of state police upon application as he or she may prescribe, shall be guilty of a misdemeanor, punishable by imprisonment in the county jail for not more than 1 year, or by a fine of not more than \$500.00, or by both fine and imprisonment in the discretion of the court.

(2) This section shall not be construed as restricting the use of radar detectors.

Comment:

This statute outlaws the equipping of any vehicle with a scanner. Exemptions are provided for peace officers and amateur radio operators. In *People v. Gilbert*, 414 Mich. 191, 324 N.W.2d 834 (1982), the Court found that this statute, as it existed at that time, did prohibit the use of radar detection devices, but the Court said that since a person of ordinary intelligence could not tell that from the language of the statute, the interpretation would be prospective only. The statute was amended on May 23, 1990 by the addition of technician class ham radio licensees as exempted individuals, and by the addition of section (2) which neutralized the holding in *People v. Gilbert* by making it clear that the statute was not intended to prohibit the use of radar detectors in the State of Michigan.

MINNESOTA:

Minn. Stat. 299C.37 (1988)

299C.37. Police communication equipment; use, sale

Subdivision 1. (a) No person other than peace officers within the state, the members of the state patrol, and persons who hold an amateur radio license issued by the Federal Communications Commission, shall equip any motor vehicle with any radio equipment or combination of equipment, capable of receiving any radio signal, message, or information from any police emergency frequency, or install, use or possess the equipment in a motor vehicle without permission from the superintendent of the bureau upon a form prescribed by the superintendent. An amateur radio license holder is not entitled to exercise the privilege granted by this paragraph if the license holder has been convicted in this state or elsewhere of a crime of violence, as defined in section 624.712, subdivision 5, unless ten years have elapsed since the person has been restored to civil rights or the sentence has expired, whichever occurs first, and during that time the person has not been convicted of any other crime of violence. For purposes of this section, "crime of violence" includes a crime in another state or jurisdiction that would have been a crime of violence if it had been committed in this state. Radio equipment installed, used, or possessed as permitted by this paragraph must be under the direct control of the license holder whenever it is used.

(b) Except as provided in paragraph (c), any person who is convicted of a violation of this subdivision shall, upon conviction for the first offense, be guilty of a misdemeanor, and for the second and subsequent offenses shall be guilty of a gross misdemeanor.

(c) An amateur radio license holder who exercises the privilege granted by paragraph (a) shall carry the amateur radio license in the motor vehicle at all times and shall present the license to a peace officer on request. A violation of this paragraph is a petty misdemeanor. A second or subsequent violation is a misdemeanor.

Subd. 2. Repealed by Laws 1971, c. 71, s 2, eff. March 30, 1971.

Subd. 3. The superintendent of the bureau shall, upon written application, issue a written permit, which shall be nontransferable, to a person, firm, or corporation showing good cause to use radio equipment capable of receiving a police emergency frequency, as a necessity, in the lawful pursuit of a business, trade, or occupation.

Subd. 4. Repealed by Laws 1983, c. 293, s 115.

Comment:

This statute completely outlaws the use of scanners in motor vehicles. There is an exemption for ham radio operators who have not been convicted of a crime of violence.

Minn. Stat. 609.856 (1988)

609.856. Use of police radios during commission of crime; penalties

Subdivision 1. Acts constituting. Whoever has in possession or uses a radio or device capable of receiving or transmitting a police radio signal, message, or transmission of information used for law enforcement purposes, while in the commission of a felony or violation of section 609.487 [fleeing a police officer in a motor vehicle] or the attempt to commit a felony or violation of section 609.487, is guilty of a felony and may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than \$5,000, or both. Notwithstanding section 609.04, a prosecution for or conviction under this section is not a bar to conviction of or punishment for any other crime committed by the defendant as part of the same conduct.

Subd. 2. Forfeiture. A radio or device defined in subdivision 1 that is used in the commission of a felony or violation of section 609.487 or attempt to commit a felony or violation of section 609.487 is contraband property and subject to the forfeiture provisions of section 609.531.

Comment:

This statute makes it a crime to use a scanner in the commission of a crime. It was amended in 1993 to make it clear that this is a separate offense apart from the felony committed while possessing or using the scanner.

NEBRASKA:

Section 28-1312

s 28-1312. Interfering with the police radio system; police radio set, defined; penalty; exceptions; equipment used in violation of sections; disposition.

(1) Police radio set shall mean any radio set or apparatus capable of either receiving or transmitting radio frequency signals within the wavelength or channel now or which may hereafter be allocated by the Federal Communications Commission for the police radio service.

(2) A person commits the offense of interfering with the police radio system if he has in his possession or in any motor vehicle or equips or installs in or on any motor vehicle, any police radio set which:

(a) In any way intentionally interferes with the transmission or reception of radio messages by any law enforcement agency and hinders any such agency in fulfillment of its duties; or

(b) Intercepts such radio signals to evade or assist others in evading arrest; or

(c) Results in the use of such communication for monetary or personal gain.

(3) The provisions of subsection (2) of this section shall not apply to:

(a) Peace officers and members of a law enforcement agency which regularly maintains a police radio system authorized and licensed by the Federal Communications Commission;

(b) Any person who has permission in writing from the head of a law enforcement agency to possess and use any radio set or apparatus capable of receiving messages or signals within the wavelength or channel assigned to the agency granting the permission; or

(c) Legal newspapers as defined in section 25-523, or radio, television or cable antenna television stations licensed pursuant to law, monitoring messages of signals for news purposes only without rebroadcasting or republishing verbatim.

(4) Interfering with the police radio system is a Class I misdemeanor.

(5) It shall be the duty of any and all peace officers to seize and hold for evidence any and all equipment possessed or used in violation of this section, and upon conviction of the person possessing or using such equipment, the court shall order such equipment destroyed or forfeited to the State of Nebraska.

Comment:

This statute outlaws only the wrongful use of information intercepted by radio either to assist a criminal or to make a monetary or personal gain. Mere listening to police communications is not prohibited.

NEW JERSEY:

NJSA 2C:33-21

Use of information intercepted from police, fire or emergency medical communications system

Any person who intercepts any message or transmission made on or over any police, fire or emergency medical communications system, or any person who is the recipient of information so intercepted, and who uses the information obtained thereby to facilitate the commission of or the attempt to commit a crime, or a violation of any law of this State, or uses the same in a manner which interferes with the discharge of police operations, shall be guilty of a crime of the fourth degree.

NJSA 2C:33-22

Possession of radio capable of receiving transmission from police, fire or emergency medical communication system

Any person who, in the course of committing or attempting to commit a crime, including the immediate flight therefrom, possesses or controls a radio capable of receiving any message or transmission made on or over any police, fire or emergency medical communications system, shall be guilty of a crime of the fourth degree.

NJSA 2C:33-23

Radar devices used to monitor vehicular speed not considered police, fire or emergency medical communications system

For purposes of NJSA 2C:33-21 and 22, the term "police, fire or emergency medical communications system" shall not include radar devices used to monitor vehicular speed.

Comment:

The statutes above were enacted on January 18, 1992 and replaced the former NJSA 2A:127-4, which has been repealed. They make it illegal to use a scanner in the commission of a crime or in violation of any law. The former statute had made the mere possession of a scanner in an automobile a crime.

NEW YORK:

NY VEH & TRAF. s 397

s 397. Equipping motor vehicles with radio receiving sets capable of receiving signals on the frequencies allocated for police use

A person, not a police officer or peace officer, acting pursuant to his special duties, who equips a motor vehicle with a radio receiving set capable of receiving signals on the frequencies allocated for police use or knowingly uses a motor vehicle so equipped or who in any way knowingly interferes with the transmission of radio messages by the police without having first secured a permit so to do from the person authorized to issue such a permit by the local governing body or board of the city, town or village in which such person resides, or where such person resides outside of a city or village in a county having a county police department by the board of supervisors of such county, is guilty of a misdemeanor, punishable by a fine not exceeding one thousand dollars, or imprisonment not exceeding six months, or both. Nothing in this section contained shall be construed to apply to any person who holds a valid amateur radio operator's license issued by the federal communications commission and who operates a duly licensed portable mobile transmitter and in connection therewith a receiver or receiving set on frequencies exclusively allocated by the federal communications commission to duly licensed radio amateurs.

Comment:

This statute prohibits the equipping of a motor vehicle with a radio capable of receiving police communications. There is some debate whether carrying a hand-held scanner in a car is "equipping" within the meaning of this statute.

In *People v. Verdino*, 78 Misc.2d 719, 357 N.Y.S.2d 769 (1974), the Court found that a driver whose receiver was not plugged into the cigarette lighter, and thus was inoperable, nevertheless violated this statute. The Court interpreted "equipped" to mean "fitted out" or "furnished." Since the receiver was "capable" of receiving signals at any time the driver wished to plug it in, the vehicle violated this statute.

This section survived a constitutional challenge on vagueness and federal pre-emption grounds in *People v. McGee*, 97 Misc.2d 360, 411 N.Y.S.2d 514 (1978). The Court said that the rationale behind this section was to prevent criminals from listening to police broadcasts in their automobiles, either prior to or after commission of a crime, and to prevent jamming of air waves during police broadcasts.

In *People v. Faude*, 88 Misc.2d 434, 388 N.Y.S.2d 562 (1976), the Court ruled that this statute did not outlaw radar detectors.

The Attorney General of New York has had occasion to issue opinions regarding this statute. From these we learn that the only counties where the board

of supervisors may designate a person to issue permits for equipping and operating a motor vehicle with a radio capable of receiving signals on police frequencies are counties which have established a police department by county charter. 1975, Op.Atty.Gen. (Inf.) 311. A local governing body or board of a city, town or village in Monroe county may not, pursuant to this section, authorize the Law Enforcement Council of Monroe County to issue permits for the equipping of motor vehicles with radio receiving sets. 1975, Op.Atty.Gen. (Inf.) 104. In the absence of specific statutory authority, a radio seized by the police in connection with an arrest and conviction for a violation of this statute is not contraband and may not be retained, destroyed or rendered incapable of receiving police frequencies but must be returned to its rightful owner. 1976, Op.Atty.Gen. (Inf.) 255.

NY PENAL _ 140.40

s 140.40 Unlawful possession of radio devices

As used in this section, the term "radio device" means any device capable of receiving a wireless voice transmission on any frequency allocated for police use, or any device capable of transmitting and receiving a wireless voice transmission. A person is guilty of unlawful possession of a radio device when he possesses a radio device with the intent to use that device in the commission of robbery, burglary, larceny, gambling or a violation of any provision of article two hundred twenty of the penal law.

Unlawful possession of a radio device is a class B misdemeanor.

Comment:

This statute outlaws possession of a radio with the intent to use it in the commission of a crime.

NORTH DAKOTA:

Century Code 54-23.2-06

54-23.2-06 Law enforcement radio equipment on private automobiles prohibited without permit.

No person may equip or use in an automobile or any other motor vehicle a two-way radio equipped for transmitting and receiving on any frequency authorized for law enforcement use by the state of North Dakota within its boundaries, without first securing a permit so to do from the director upon such application as the director may prescribe. This section does not apply to the use of a two-way citizens' band radio, a two-way business radio, or a two-way amateur radio in an automobile or any other motor vehicle.

Comment:

This statute outlaws only unauthorized two-way radios in motor vehicles. The use of radio receivers to intercept police communications is not circumscribed by this statute.

OKLAHOMA:

Title 21 _ 1214

s 1214. Radio sets capable of receiving on police frequencies--Unlawful uses--Penalty

It shall be unlawful for any person to operate a mobile radio capable of receiving transmissions made by any law enforcement agency for illegal purposes or while in the commission of a crime and not otherwise and any person violating the provisions hereof shall be guilty of a felony and upon conviction thereof shall be punished by imprisonment in the penitentiary for not more than three (3) years, or fined by not more than Five Thousand Dollars (\$5,000.00), or by both such imprisonment and fine.

Comment:

This statute makes the use of radio monitoring for illegal purposes a crime. In *Davenport v. State*, 510 P.2d 988 (1973), the Court ruled that this statute was violated where a Realistic Pro-8 scanner was found operating on a table at the defendant's house and marijuana was also found in the house. The Court said that the mere fact that the radio was on at the time was enough to charge the defendant with operating a radio, for the purpose of this statute, and that term did not require constant manual control of the radio. This statute originally limited the mere possession of radios capable of receiving police frequencies, but was rewritten to its present form in 1970.

RHODE ISLAND:

11-1-11 Felons prohibited from possession of radio scanners.

No person who has been convicted of a felony violation of chapter 28 of title 21 involving the illegal manufacture, sale or delivery or possession with intent to manufacture, sell, or deliver a controlled substance classified in Schedule I or II; or who has been convicted of a felony in violation of chapter 8 of this title involving the burglary or breaking and entering of a dwelling house or apartment, whether the house or apartment is occupied or not, any business place, or public building, with the intent to commit larceny; shall carry, transport, or have in his or her possession, or under his or her control outside of his or her own home, any operational police radio, police scanner, or any other device capable of monitoring police broadcasts. Every person violating the provisions of this section shall, upon conviction, be punished by imprisonment for not more than five (5) years or a fine of not more than five thousand dollars (\$5,000) or both.

Comment:

As originally proposed, the law would, as its title indicates, prohibit all felons from possession of radio scanners. However, as enacted, this law prohibited only certain drug felons from possession of a scanner outside of their homes. In 1992 the law was amended to add burglary, breaking and entering, and larceny to the types of felonies covered. Unlike similar legislation in South Dakota and Minnesota, there is no time limit on the prohibition. Thus a person convicted of a felony would be banned for life from having a scanner. The statute is flawed insofar as it appears to be limited only to felons convicted in Rhode Island. Felons convicted in other states would not appear to fall within this law.

SOUTH DAKOTA:

Chapter 23-4

23-4-2 Possession by felon of police radio as misdemeanor -- Radio stations unaffected.

No person who has been convicted of a felony in this state or elsewhere within the past ten years shall possess any frequency modulation receiving equipment capable of being so adjusted or tuned as to receive messages or signals on frequencies assigned by the federal communications commission to local or state law enforcement officers, or to the state or any of its agencies. Any person who violates this section is guilty of a Class 2 misdemeanor. Nothing in this section shall be construed to affect any radio station licensed by the federal communications system.

23-4-3 Permit to monitor assigned frequencies.

At the discretion of the attorney general or the legal licensee of each county or municipality, a permit to monitor said assigned frequencies may be issued. Such permit will apply to fixed monitors in authorized places of business. Application for such permit will be made in writing to the attorney general for frequencies assigned to the state of South Dakota and to the sheriff or fire chief for frequencies assigned to various counties and to the chief of police and fire chief of the various municipalities.

23-4-4 Federal licensees exempt from chapter.

This chapter does not apply to any holders of a valid amateur radio operator or station license issued by the federal communications commission.

23-4-5 Unlawful possession of receiving set or converter without permission -- Seizure by peace officer.

The possession of any receiving set or converter described in s 23-4-2 in any vehicle or business establishment, without permission pursuant to s 23-4-3, will constitute prima facie evidence of possession for unlawful purposes, and such receiving set shall be deemed contraband and shall be confiscated by any peace officer of this state and delivered to the attorney general for disposition.

Comment:

These statutes make it a crime only for someone convicted of a felony in the last 10 years to possess a radio which covers police frequencies. Non-felons may monitor at will. Amateur radio operators, even if they are felons, may monitor at will.

VERMONT:

Title 13 s. 3014

s 3014. Use of police broadcasts in furthering crime

A person who owns or operates a motor vehicle equipped with a radio receiving set capable of receiving signals on the frequencies allocated for police use who knowingly and without privilege makes use of any information that has been broadcast on local or state police radio frequencies for the purpose of furthering crime or aiding and abetting the flight of criminals shall be fined not more than \$250.00 or imprisoned not more than thirty days or both.

Comment:

This law makes criminal only improper use of information heard on a radio. The mere listening to police frequencies is not outlawed as long as the information obtained is not used to aid criminal activity.

WEST VIRGINIA:

WV ST s 15-3-5

s 15-3-5 Use of information obtained by interceptions of transmissions on department of public safety communications system forbidden; penalties.

No person shall intercept any message or transmission made on or over any communications system established by the department of public safety and use the information obtained thereby to aid, abet or assist in committing a crime, or in violating any law of this State, or use the same in a manner which will interfere with the discharge of the department's operations.

Any person who violates any provision of this section or of section two [s 15-3-2] of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to confinement in the county jail for a period not to exceed one year or by a fine of an amount not to exceed five hundred dollars or by both such confinement and fine in the discretion of the court.

Comment:

This law makes criminal only improper use of information heard on a radio. The mere listening to police frequencies is not outlawed as long as the information obtained is not used to obstruct police activities.

APPENDIX:

FCC 93-410

IN THE MATTER OF FEDERAL PREEMPTION OF STATE AND LOCAL LAWS
CONCERNING LOCAL LAWS CONCERNING AMATEUR OPERATOR USE OF
TRANSCIVERS CAPABLE OF RECEPTION BEYOND AMATEUR SERVICE
FREQUENCY ALLOCATIONS

PR Docket No. 91-36

Adopted: August 20, 1993; Released: September 3, 1993

MEMORANDUM OPINION AND ORDER

By the Commission:

I. INTRODUCTION

1. On November 14, 1989, the American Radio Relay League, Incorporated (ARRL), filed a Motion for a Declaratory Ruling [FN1] requesting that the Commission preempt certain state statutes and local ordinances affecting transceivers [FN2] used by Amateur Radio Service licensees. The laws referenced by the ARRL prohibit the possession of such transceivers if they are capable of the reception of communications on certain frequencies other than amateur service frequencies. On March 15, 1990, we released a public notice [FN3] inviting comment on ARRL's request. In addition, on February 28, 1991, we released a Notice of Inquiry: [FN4] that solicited additional comment to assist us in making a decision in this matter. This Memorandum Opinion and Order grants the request to the extent indicated herein.

II. BACKGROUND

2. The ARRL motion discusses state statutes and local ordinances commonly known as "scanner laws," the violation of which may be a criminal misdemeanor with the possibility of equipment confiscation. [FN5] Specifically, ARRL notes that state statutes in New Jersey and Kentucky (which have subsequently been changed--see paragraph 3, *infra*) prohibit the possession of a mobile short-wave radio capable of receiving frequencies assigned by the Commission for, *inter alia*, police use. [FN6] In addition, ARRL states that local ordinances exist throughout the United States that similarly prohibit the possession of such mobile short-wave radios without a locally-issued permit. [FN7] Therefore, ARRL explains, scanner laws can, *inter alia*, render amateur radio licensees traveling interstate by automobile vulnerable to arrest and to the seizure of their radio equipment by state or local police. [FN8]

3. Since the ARRL motion was filed with the Commission New Jersey repealed its statute and substituted a new, narrowly tailored scanner law that only applies in the criminal context. [FN9] In addition, Kentucky amended its statute by adding

an exemption applying to amateur radio licensees. [FN10] As a result, there no longer appears to be any state scanner law with a deleterious effect on the legitimate operations of amateur radio service licensees. Nonetheless, the preemption issue raised by the ARRL motion remains timely because it appears that some local scanning ordinances remain in effect without safeguards to protect the legitimate use of such radios by our licensees. [FN11]

III. MOTION, INQUIRY AND COMMENTS

A. The ARRL Motion.

4. ARRL makes two arguments in support of preemption. First, it states that the receiver sections of the majority of commercially available amateur station transceivers can be tuned slightly past the edges of the amateur service bands to facilitate adequate reception up to the end of amateur service bands. ARRL seeks a preemption ruling that would permit amateur operators to install in vehicles transceivers that are capable of this "incidental" reception. [FN12] Although ARRL's formal request is couched in terms of this first, technical point, the request focuses almost entirely on a second, broader issue of whether state and local authorities should be permitted, via the scanner laws, to prohibit the capability of radio reception by amateur operators on public safety and special emergency frequencies that are well outside the amateur service bands.

5. Concerning the broader issue, ARRL argues that amateur operators have special needs for broadscale "out-of-band" reception, and that the marketplace has long recognized these needs by offering accommodating transceivers. According to ARRL, [FN13] all commercially manufactured amateur service HF transceivers and the majority of such VHF and UHF transceivers have non-amateur service frequency reception capability well beyond the "incidental"--they can receive across a broad spectrum of frequencies, including the police and other public safety and special emergency frequencies here at issue. This additional capability, argues ARRL, permits amateur operators to participate in a variety of safety activities, some in conjunction with the military or the National Weather Service. In both cases, reception on non-amateur frequencies is necessary. Such activities benefit the public, according to ARRL, especially in times of emergency, [FN14] and some require the mobile use of the amateur stations. [FN15] ARRL states that, in addition, the vast majority of amateur operators take part in these mobile activities, and that the widespread enforcement of scanner laws would render illegal the possession of virtually all modern amateur mobile equipment. [FN16] ARRL states that, as a result of scanner laws, "several dozen instances of radio seizure and criminal arrest [have been] suffered by licensed amateurs." [FN17]

B. The Inquiry and Comments.

6. The Commission's February 28, 1991 Inquiry solicited additional information concerning the technical and financial feasibility of modifying existing amateur

service mobile transceivers to render them incapable of receiving police or other public safety channels. We also asked for information concerning the current and future marketplace availability of mobile equipment meeting the restrictions of the laws and whether there is value in having an available pool of wide-band, mobile amateur equipment in the United States to meet emergency needs.

7. In response to the Inquiry, we received 115 comments and reply comments, of which the great majority are from individual amateurs who support preemption. [FN18] One commenter, the Michigan Department of State Police, states that although it cooperates with the amateur service during emergencies, it is concerned about isolated incidents of apparently unlawful actions taken by amateur licensees upon receipt of public safety communications outside of the amateur radio band. [FN19] Therefore, it concludes that "there can be no beneficial need for amateur radio equipment to tune in public safety channels." [FN20] Of the remaining comments received, only a few address the technical and marketplace questions described above. These comments are from individual amateur operators [FN21] who state that existing wide-band transceivers cannot be modified to meet the restrictions of the scanner laws without substantial expense and that this situation will continue as new equipment becomes available. Despite our specific request in the Inquiry that manufacturers comment on these technical and financial questions, no manufacturer chose to respond on these points. We also received a few comments describing the prevalence of scanner laws nationwide. [FN22] Finally, the National Communications System (NCS), of the Department of Defense, states in its comment that the federal government utilizes amateur operators in a number of programs requiring mobile, wide-band transceivers. [FN23]

IV. DISCUSSION

8. There are three ways state and local laws may be preempted. First, Congress may expressly preempt the state or local law. Second, Congress may, through legislation, clearly indicate its intent to occupy the field of regulation, leaving "no room for the States to supplement." [FN24] Last, and most important for this discussion,

[e]ven where Congress has not completely displaced state regulation in a specific area, state law [may be] nullified to the extent that it actually conflicts with federal law. Such a conflict arises when "compliance with both federal and state regulations is a physical impossibility," ... or when state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." [FN25]

Furthermore, "[f]ederal regulations have no less preemptive effect than federal statutes." [FN26]

9. The amateur service is regulated extensively under Part 97 of the Commission's Rules, 47 C.F.R. Part 97. As we have stated in the past:

[T]here is ... a strong federal interest in promoting amateur communications.

Evidence of this interest may be found in the comprehensive set of rules that the

Commission has adopted to regulate the amateur service. Those rules set forth procedures for the licensing of stations and operators, frequency allocations, technical standards which amateur radio equipment must meet and operating practices which amateur operators must follow. We recognize the Amateur Radio Service as a voluntary, noncommercial communication service, particularly with respect to providing emergency communications. Moreover, the Amateur Radio Service provides a reservoir of trained operators, technicians and electronic experts who can be called on in times of national or local emergencies. By its nature, the Amateur Radio Service also provides the opportunity for individual operators to further international goodwill. [FN27]

This federal interest in the amateur service is also reflected in Section 97.1 of our rules, 47 C.F.R. s 97.1, which provides that the amateur service exists to "continu[e] and exten[d] ... the amateur's proven ability to contribute to the advancement of the radio art." [FN28] This regulatory purpose is consistent with the Communications Act requirement that "[i]t shall be the policy of the United States to encourage the provision of new technologies to the public." [FN29]

10. The strong federal interest in the preservation and advancement of the amateur service is also demonstrated by Congress's recent recognition of the goals of the amateur service in a "Sense of Congress" provision in which Congress strongly encouraged and supported the amateur service. [FN30] Congress therein directed all Government agencies to take into account the valuable contribution of amateurs when considering actions affecting the amateur radio service. [FN31] We believe that the strong federal interest in supporting the emergency services provided by amateurs cannot be fully accomplished unless amateur operators are free to own and operate their stations to the fullest extent permitted by their licenses and are not unreasonably hampered in their ability to transport their radio transmitting stations across state and local boundaries for purposes of transmitting and receiving on authorized frequencies. Indeed, as a result of advances in technology making smaller, lighter weight radios commercially available, the Commission has expressly amended its rules to facilitate and encourage unrestricted mobile amateur operations. As we noted in a recent rulemaking proceeding to modify the rules governing the amateur radio service.

[I]n the age of the microprocessor and the integrated circuit [amateur] equipment is highly portable. It is common for amateur operators to carry hand-held transceivers capable of accessing many local repeaters in urban areas and also capable of reasonably good line-of-sight communication. It appears that the concept of fixed station operation no longer carries with it the same connotation it did previously. For this Reason, we propose to delete current rules that relate to station operation away from the authorized fixed station location. [FN32]

As a consequence of these changes, the rules now expressly authorize amateur service operation "at points where the amateur service is regulated by the FCC," that is, at fixed and mobile locations throughout the United States. Furthermore, the Commission's Rules do not in any way prohibit an amateur service transceiver from having out-of-band reception capability. [FN33]

11. Against this background, we conclude that certain state and local laws, as described below, conflict with the Commission's regulatory scheme designed to promote a strong amateur radio service. Scanner laws that prohibit the use of transceivers that transmit and receive amateur frequencies because they also receive public safety, special emergency or other radio service frequencies frustrate most legitimate amateur service mobile operations through the threat of penalties such as fines and the confiscation of equipment. As noted by ARRL, virtually all modern amateur service equipment in use today can receive transmissions on the public safety and special emergency frequencies at issue, and the majority of amateur stations [FN34] are operated in a mobile fashion. Consequently, the mobile operations of the vast majority of amateurs are affected by such laws. In addition, the record statements by amateurs that the costs would be substantial to modify existing transceivers are unchallenged. The scanner laws, then, essentially place the amateur operator in the position of either foregoing mobile operations by simply avoiding all use of the equipment in vehicles or other locations specified in the laws, or risking fines, or equipment confiscation. This very significant limitation on amateurs operating rights runs counter to the express policies of both Congress and the Commission to encourage and support amateur service operations, including mobile operations, and impermissibly encroaches on federal authority over amateur operators. [FN35] It conflicts directly with the federal interest in amateur operators being able to transmit and receive on authorized amateur service frequencies. [FN36]

12. For these reasons, we find it necessary to preempt state and local laws that effectively preclude the possession in vehicles or elsewhere of amateur service transceivers by amateur operators merely on the basis that the transceivers are capable of reception on public safety, special emergency, or other radio service frequencies, the reception of which is not prohibited by federal law. [FN37] We find that, under current conditions and given the types of equipment available in the market today, such laws prevent amateur operators from using their mobile stations to the full extent permitted under the Commission's Rules and thus are in clear conflict with federal objectives of facilitating and promoting the Amateur Radio Service. We recognize the state law enforcement interest present here, and we do not suggest that state regulation in this area that reasonably attempts to accommodate amateur communications is preempted. [FN38] This decision does not pertain to scanner laws narrowly tailored to the use of such radios, for example, for criminal ends such as to assist flight from law enforcement personnel. We will not, however, suggest the precise language that must be contained in state and local laws. We do find that state and local laws must not restrict the possession of amateur transceivers simply because they are capable of reception of public safety, special emergency or other radio service frequencies, the reception of which is not prohibited by federal law, and that a state or local permit scheme will not save from preemption an otherwise objectionable law. [FN39] Finally, we note, as stated by APCO in comments filed previously in this proceeding, that any public safety agency that desires to protect the confidentiality of its communications can do so through the use of technology such as scrambling or encryption. [FN40]

V. CONCLUSION

13. We hold that state and local laws that preclude the possession in vehicles or elsewhere of amateur radio service transceivers by amateur operators merely on the basis that the transceivers are capable of the reception of public safety, special emergency, or other radio service frequencies, the reception of which is not prohibited by federal law, are inconsistent with the federal objectives of facilitating and promoting the amateur radio service and, more fundamentally, with the federal interest in amateur operators' being able to transmit and receive on authorized amateur service frequencies. We therefore hold that such state and local laws are preempted by federal law.

14. Accordingly, IT IS ORDERED that the request for a declaratory ruling filed by the ARRL IS GRANTED to the extent indicated herein and in all other respects IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton

Acting Secretary

FN1. The American Radio Relay League, Inc., Request for Declaratory Ruling Concerning the Possession of Radio Receivers Capable of Reception of Police or Other Public Safety Communications (November 13, 1989) (ARRL motion).

FN2. Transceivers are radio equipment capable of both transmission and reception.

FN3. Public Notice, 5 FCCRcd 1981 (1990), 55 Fed.Reg. 10805 (March 23, 1990). Comments were due by May 16, 1990, and reply comments by May 31, 1990.

FN4. 6 FCCRcd 1305 (1991) (Inquiry).

FN5. The scanner laws appear to be aimed at promoting the health, safety, and general welfare of the citizenry.

FN6. See generally ARRL motion (citing N.J.Stat.Ann. s 2A:127--4 (West 1985) (noting that a person is guilty of a misdemeanor for possessing or installing a short-wave radio in an automobile capable of receiving, inter alia, frequencies assigned for police use unless a permit has been issued therefor by the chief of the county or municipal police wherein such person resides) and Ky.Rev.Stat.Ann. s 432.570 (Michie/Bobbs-Merrill 1985) (noting that any person who possesses a mobile shortwave radio capable of receiving frequencies assigned for police use is guilty of a misdemeanor, except that certain users such as radio and television stations, sellers of the "scanner" radios, disaster and emergency personnel, and those using the weather radio service of the National Oceanic and Atmospheric Administration are exempt, while amateur radio licensees are not exempt).

FN7. See generally ARRL motion (regarding, inter alia, a Kansas City, Missouri, scanner law). See also note 24, *infra*.

FN8. *Id.*

FN9. N.J.Stat.Ann. s 2C:33-22 (West 1992).

FN10. Ky.Rev.Stat.Ann. s 432.570(4)(c) (Baldwin 1992).

FN11. See note 22, *infra*.

FN12. ARRL Motion at 1, 3 and 5. "Most commercial amateur radio VHF and UHF transceivers ... are incidentally capable of reception (but not transmission) on frequencies additional to those allocated to the Amateur Radio Service. These frequencies are adjacent to amateur allocations. This is true even though the equipment is primarily designed for amateur bands, and results from the intentional effort to insure proper operation of the transceiver throughout the entire amateur band in question." *Id.* at 3.

FN13. *Id.* at 12.

FN14. For example, amateur radio licensees were widely recognized as serving a vital role in providing communications from devastated areas of South Florida during Hurricane Andrew and its aftermath in 1992.

FN15. See generally House Comm. on the Judiciary, Electronic Communications Privacy Act of 1986, H.R.Rep. No. 647, 99th Cong., 2d Sess. 42.

FN16. ARRL motion at 2 and 12. As of February 28, 1993, the Commission's licensing database indicates that there are 598,656 amateur stations in the United States and its territories and possessions.

FN17. *Id.* at 11.

FN18. A list of commenters is provided in the Appendix. Further, we have accepted a comment from Communications Electronics, Inc., which was filed one day late. See generally 47 C.F.R. s 1.46(b). We also have considered 45 comments filed previously in this proceeding. See Inquiry, 6 FCCRed at 1306- 1308 (noting that all of the filed comments support the ARRL motion). In addition, we received comments from scanner (receive-only equipment) users, who are not federal licensees and whose interests have not been at issue in this proceeding.

FN19. Comment of State of Michigan, Department of State Police, at 2-3 (June 3, 1991). But see Reply Comments of Personal Radio Steering Group of Ann Arbor,

Michigan (July 8, 1991) (noting that ARRL has not requested the preemption of state and local laws that proscribe unlawful actions taken by amateur licensees).

FN20. Comment of State of Michigan, *supra*, at 2-3. But see paragraph 12, n. 40, *infra* (noting the comments supporting preemption filed previously in this proceeding by the Associated Public Safety Communications Officers (APCO)).

FN21. See, e.g., Comment of John F. Fuhrman at 4 (April 29, 1991), Comment of Joseph Reymann at 9, 14 (May 24, 1991), and Comment of Mark D. Tavaglino at 3 (July 5, 1991).

FN22. See, e.g., Comment of ARRL at 12 & n. 6, 14 (June 7, 1991); Comment of Association of North American Radio Clubs at 5 (April 30, 1990); Comment of Radio Communications Monitoring Association at 5 (June 6, 1991). With respect to scanner laws at the local level, ARRL has notes that it is difficult to determine the precise number of such ordinances. See Comment of ARRL at 12 (June 7, 1991); See also Letter from ARRL to the Chief, Private Radio Bureau, Federal Communications Commission, Washington, D.C. (May 26, 1993) 1993 (noting local scanner laws in effect in Newton and Overland Park, Kansas, Jersey City, New Jersey, and Kansas City, Missouri).

FN23. Comment of National Communications System at 2-4 (June 7, 1991).

FN24. *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691, 699-705 (1984) (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)).

FN25. *Fidelity Fed. Savings & Loan Ass'n v. de la Cuesta*

State Laws Regulating Scanners

State	Citation for Scanner Law	Prohibits scanners in cars	Prohibits improper use of scanners	No laws restrict scanners	Other
Alabama				x	
Alaska				x	
Arizona				x	
Arkansas				x	
California	Penal Code §636.5		x		Intercepting cordless telephone conversations is prohibited by Penal Law §632.6
Colorado				x	
Connecticut				x	
Delaware				x	
Florida	§ 843.16	x			Also prohibits scanners on a business premises
Georgia				x	
Hawaii				x	
Idaho				x	
Illinois				x	
Indiana	§ 35-44-3-12	x			Prohibits portable scanners everywhere
Iowa				x	
Kansas				x	
Kentucky	§ 432.570		x		Prohibits scanners everywhere except at home
Louisiana				x	
Maine				x	
Maryland				x	
Massachusetts				x	
Michigan	Penal Code § 750.508	x			
Minnesota	§299C.37	x	x		§609.856 also outlaws improper use of a scanner
Mississippi				x	
Missouri				x	
Montana				x	
Nebraska	§ 28-1312		x		
Nevada				x	

State	Citation for Scanner Law	Prohibits scanners in cars	Prohibits improper use of scanners	No laws restrict scanners	Other
New Hampshire				x	
New Jersey	<i>N.J.S.A.</i> 2C:33-21		x		
New Mexico				x	
New York	Veh. & Traf. § 397	x	x		Penal Law §140.40 also prohibits the improper use of a scanner
North Carolina				x	
North Dakota				x	
Ohio				x	
Oklahoma	Title 21 § 1214		x		
Oregon				x	
Pennsylvania				x	State
Rhode Island	§ 11-1-11				Prohibits some felons from having scanners
South Carolina				x	
South Dakota	Chapter 23-4				Prohibits felons from having scanners
Tennessee				x	
Texas				x	
Utah				x	
Vermont	Title 13 § 3014		x		
Virginia				x	
Washington				x	
West Virginia	§ 15-3-5		x		
Wisconsin				x	
Wyoming				x	