

Union Calendar No. 409

106TH CONGRESS
2D SESSION**H. R. 3489****[Report No. 106-725, Parts I and II]**

To amend the Communications Act of 1934 to regulate interstate commerce in the use of mobile telephones and to strengthen and clarify prohibitions on electronic eavesdropping, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 18, 1999

Mr. PICKERING (for himself, Mr. MARKEY, Mrs. WILSON, Mr. LARGENT, and Mr. TAUZIN) introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

JULY 11, 2000

Additional sponsors: Mr. DINGELL, Mr. FOSSELLA, Mr. OXLEY, Mr. SUNUNU, Mrs. CUBIN, Mr. STEARNS, Mr. GILLMOR, Mr. EHRLICH, Ms. MCCARTHY of Missouri, Mr. BLUNT, Mr. SHAYS, Mr. BOUCHER, Mr. WYNN, Mr. DEAL of Georgia, Mr. MCHUGH, Mr. SWEENEY, Mr. COBURN, and Mr. GONZALEZ

JULY 11, 2000

Reported from the Committee on Commerce with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

JULY 11, 2000

Reported from the Committee on the Judiciary with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in boldface roman]

[For text of introduced bill, see copy of bill as introduced on November 18, 1999]

A BILL

To amend the Communications Act of 1934 to regulate interstate commerce in the use of mobile telephones and to strengthen and clarify prohibitions on electronic eavesdropping, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Wireless Telecommuni-*
 5 *cations Sourcing and Privacy Act”.*

6 **SEC. 2. FINDINGS.**

7 *The Congress finds the following:*

8 *(1) The provision of mobile telecommunications*
 9 *services is a matter of interstate commerce within the*
 10 *jurisdiction of the United States Congress under Arti-*
 11 *cle I, Section 8 of the United States Constitution.*
 12 *Certain aspects of mobile telecommunications tech-*
 13 *nologies and services do not respect, and operate inde-*
 14 *pendently of, State and local jurisdictional bound-*
 15 *aries.*

16 *(2) The mobility afforded to millions of Amer-*
 17 *ican consumers by mobile telecommunications services*
 18 *helps to fuel the American economy, facilitate the de-*

1 *velopment of the information superhighway and pro-*
2 *vide important safety benefits.*

3 *(3) Users of mobile telecommunications services*
4 *can originate a call in one State or local jurisdiction*
5 *and travel through other States or local jurisdictions*
6 *during the course of the call. These circumstances*
7 *make it more difficult to track the separate segments*
8 *of a particular call with all of the States and local*
9 *jurisdictions involved with the call. In addition, ex-*
10 *panded home calling areas, bundled service offerings*
11 *and other marketing advances make it increasingly*
12 *difficult to assign each transaction to a specific tax-*
13 *ing jurisdiction.*

14 *(4) State and local taxes imposed on mobile tele-*
15 *communications services that are not consistently*
16 *based can subject consumers, businesses and others en-*
17 *gaged in interstate commerce to multiple, confusing*
18 *and burdensome State and local taxes and result in*
19 *higher costs to consumers and the industry.*

20 *(5) State and local taxes that are not consist-*
21 *ently based can result in some telecommunications*
22 *revenues inadvertently escaping State and local tax-*
23 *ation altogether, thereby violating standards of tax*
24 *fairness, creating inequities among competitors in the*

1 *telecommunications market and depriving State and*
2 *local governments of needed tax revenues.*

3 *(6) Because State and local tax laws and regula-*
4 *tions of many jurisdictions were established before the*
5 *proliferation of mobile telecommunications services,*
6 *the application of these laws to the provision of mo-*
7 *bile telecommunications services may produce con-*
8 *flicting or unintended tax results.*

9 *(7) State and local governments provide essential*
10 *public services, including services that Congress en-*
11 *courages State and local governments to undertake in*
12 *partnership with the Federal government for the*
13 *achievement of important national policy goals.*

14 *(8) State and local governments provide services*
15 *that support the flow of interstate commerce, includ-*
16 *ing services that support the use and development of*
17 *mobile telecommunications services.*

18 *(9) State governments as sovereign entities in*
19 *our Federal system may require that interstate com-*
20 *merce conducted within their borders pay its fair*
21 *share of tax to support the governmental services pro-*
22 *vided by those governments.*

23 *(10) Local governments as autonomous subdivi-*
24 *sions of a State government may require that inter-*
25 *state commerce conducted within their borders pay its*

1 *fair share of tax to support the governmental services*
2 *provided by those governments.*

3 *(11) To balance the needs of interstate commerce*
4 *and the mobile telecommunications industry with the*
5 *legitimate role of State and local governments in our*
6 *system of federalism, Congress needs to establish a*
7 *uniform and coherent national policy regarding the*
8 *taxation of mobile telecommunications services*
9 *through the exercise of its constitutional authority to*
10 *regulate interstate commerce.*

11 *(12) Congress also recognizes that the solution es-*
12 *tablished by this legislation is a necessarily practical*
13 *one and must provide for a system of State and local*
14 *taxation of mobile telecommunications services that in*
15 *the absence of this solution would not otherwise occur.*
16 *To this extent, Congress exercises its power to provide*
17 *a reasonable solution to otherwise insoluble problems*
18 *of multi-jurisdictional commerce.*

1 **SEC. 3. AMENDMENT OF COMMUNICATIONS ACT OF 1934 TO**
 2 **PROVIDE RULES FOR DETERMINING STATE**
 3 **AND LOCAL GOVERNMENT TREATMENT OF**
 4 **CHARGES RELATED TO MOBILE TELE-**
 5 **COMMUNICATIONS SERVICES.**

6 (a) *IN GENERAL.*—*The Communications Act of 1934*
 7 *(47 U.S.C. 151 et seq.) is amended by adding at the end*
 8 *thereof the following:*

9 **“TITLE VIII—STATE AND LOCAL**
 10 **TREATMENT OF CHARGES**
 11 **FOR MOBILE TELECOMMUNI-**
 12 **CATIONS SERVICES**

13 **“SEC. 801. APPLICATION OF TITLE.**

14 “(a) *IN GENERAL.*—*This title applies to any tax,*
 15 *charge, or fee levied by a taxing jurisdiction as a fixed*
 16 *charge for each customer or measured by gross amounts*
 17 *charged to customers for mobile telecommunications serv-*
 18 *ices, regardless of whether such tax, charge, or fee is imposed*
 19 *on the vendor or customer of the service and regardless of*
 20 *the terminology used to describe the tax, charge, or fee.*

21 “(b) *GENERAL EXCEPTIONS.*—*This title does not*
 22 *apply to—*

23 “(1) *any tax, charge, or fee levied upon or meas-*
 24 *ured by the net income, capital stock, net worth, or*
 25 *property value of the provider of mobile telecommuni-*
 26 *cations service;*

1 “(2) any tax, charge, or fee that is applied to an
2 equitably apportioned amount that is not determined
3 on a transactional basis;

4 “(3) any tax, charge, or fee that represents com-
5 pensation for a mobile telecommunications service
6 provider’s use of public rights of way or other public
7 property, provided that such tax, charge, or fee is not
8 levied by the taxing jurisdiction as a fixed charge for
9 each customer or measured by gross amounts charged
10 to customers for mobile telecommunication services;

11 “(4) any generally applicable business and occu-
12 pation tax that is imposed by a State, is applied to
13 gross receipts or gross proceeds, is the legal liability
14 of the carrier, and statutorily allows the taxpayer to
15 elect to use the sourcing method required in this Act;
16 or

17 “(5) any fee related to obligations under section
18 254 of this Act.”.

19 “(c) *SPECIFIC EXCEPTIONS.*—This title—

20 “(1) does not apply to the determination of the
21 taxing situs of prepaid telephone calling services;

22 “(2) does not affect the taxability of either the
23 initial sale of mobile telecommunications services or
24 subsequent resale, whether as sales of the service alone
25 or as a part of a bundled product, where the Internet

1 *Tax Freedom Act would preclude a taxing jurisdic-*
 2 *tion from subjecting the charges of the sale of these*
 3 *mobile telecommunications services to a tax, charge,*
 4 *or fee but this section provides no evidence of the in-*
 5 *tent of Congress with respect to the applicability of*
 6 *the Internet Tax Freedom Act to such charges; and*

7 *“(3) does not apply to the determination of the*
 8 *taxing situs of air-ground radiotelephone service as*
 9 *defined in section 22.99 of the Commission’s regula-*
 10 *tions (47 C.F.R. 22.99).*

11 **“SEC. 802. SOURCING RULES.**

12 *“(a) IN GENERAL.—Notwithstanding the law of any*
 13 *State or political subdivision thereof to the contrary, mobile*
 14 *telecommunications services provided in a taxing jurisdic-*
 15 *tion to a customer, the charges for which are billed by or*
 16 *for the customer’s home service provider, shall be deemed*
 17 *to be provided by the customer’s home service provider.*

18 *“(b) JURISDICTION.—All charges for mobile tele-*
 19 *communications services that are deemed to be provided by*
 20 *the customer’s home service provider under this title are au-*
 21 *thorized to be subjected to tax, charge, or fee by the taxing*
 22 *jurisdictions whose territorial limits encompass the cus-*
 23 *tomers’ place of primary use, regardless of where the mobile*
 24 *telecommunication services originate, terminate or pass*
 25 *through, and no other taxing jurisdiction may impose taxes,*

1 *charges, or fees on charges for such mobile telecommuni-*
 2 *cations services.*

3 **“SEC. 803. LIMITATIONS.**

4 *“This title does not—*

5 *“(1) provide authority to a taxing jurisdiction to*
 6 *impose a tax, charge, or fee that the laws of the juris-*
 7 *diction do not authorize the jurisdiction to impose; or*

8 *“(2) modify, impair, supersede, or authorize the*
 9 *modification, impairment, or supersession of, the law*
 10 *of any taxing jurisdiction pertaining to taxation ex-*
 11 *cept as expressly provided in this title.*

12 **“SEC. 804. ELECTRONIC DATABASES FOR NATIONWIDE**
 13 **STANDARD NUMERIC JURISDICTIONAL**
 14 **CODES.**

15 *“(a) ELECTRONIC DATABASE.—A State may provide*
 16 *an electronic database to a home service provider or, if a*
 17 *State does not provide such an electronic database to home*
 18 *service providers, then the designated database provider*
 19 *may provide an electronic database to a home service pro-*
 20 *vider. The electronic database, whether provided by the*
 21 *State or the designated database provider, shall be provided*
 22 *in a format approved by the American National Standards*
 23 *Institute’s Accredited Standards Committee X12, that, al-*
 24 *lowing for de minimis deviations, designates for each street*
 25 *address in the State, including to the extent practicable,*

1 *any multiple postal street addresses applicable to one street*
2 *location, the appropriate taxing jurisdictions, and the ap-*
3 *propriate code for each taxing jurisdiction, for each level*
4 *of taxing jurisdiction, identified by one nationwide stand-*
5 *ard numeric code. The electronic database shall also provide*
6 *the appropriate code for each street address with respect to*
7 *political subdivisions which are not taxing jurisdictions*
8 *when reasonably needed to determine the proper taxing ju-*
9 *risdiction. The nationwide standard numeric codes shall*
10 *contain the same number of numeric digits with each digit*
11 *or combination of digits referring to the same level of taxing*
12 *jurisdiction throughout the United States using a format*
13 *similar to FIPS 55–3 or other appropriate standard ap-*
14 *proved by the Federation of Tax Administrators and the*
15 *Multistate Tax Commission, or their successors. Each ad-*
16 *dress shall be provided in standard postal format.*

17 “(b) *NOTICE; UPDATES.*—A State or designated data-
18 *base provider that provides or maintains an electronic*
19 *database described in subsection (a) shall provide notice of*
20 *the availability of the then current electronic database, and*
21 *any subsequent revisions thereof, by publication in the man-*
22 *ner normally employed for the publication of informational*
23 *tax, charge, or fee notices to taxpayers in that State.*

24 “(c) *USER HELD HARMLESS.*—A home service pro-
25 *vider using the data contained in the electronic database*

1 *described in subsection (a) shall be held harmless from any*
2 *tax, charge, or fee liability that otherwise would be due sole-*
3 *ly as a result of any error or omission in the electronic*
4 *database provided by a State or designated database pro-*
5 *vider. The home service provider shall reflect changes made*
6 *to the electronic database during a calendar quarter no*
7 *later than 30 days after the end of that calendar quarter*
8 *for each State that issues notice of the availability of an*
9 *electronic database reflecting such changes under subsection*
10 *(b).*

11 **“SEC. 805. PROCEDURE WHERE NO ELECTRONIC DATABASE**
12 **PROVIDED.**

13 *“(a) IN GENERAL.—If neither a State nor designated*
14 *database provider provides an electronic database under*
15 *section 804, a home service provider shall be held harmless*
16 *from any tax, charge, or fee liability in that State that oth-*
17 *erwise would be due solely as a result of an assignment of*
18 *a street address to an incorrect taxing jurisdiction if, sub-*
19 *ject to section 806, the home service provider employs an*
20 *enhanced zip code to assign each street address to a specific*
21 *taxing jurisdiction for each level of taxing jurisdiction and*
22 *exercises due diligence at each level of taxing jurisdiction*
23 *to ensure that each such street address is assigned to the*
24 *correct taxing jurisdiction. Where an enhanced zip code*
25 *overlaps boundaries of taxing jurisdictions of the same level,*

1 *the home service provider must designate one specific juris-*
2 *isdiction within such enhanced zip code for use in taxing the*
3 *activity for that enhanced zip code for each level of taxing*
4 *jurisdiction. Any enhanced zip code assignment changed in*
5 *accordance with section 806 is deemed to be in compliance*
6 *with this section. For purposes of this section, there is a*
7 *rebuttable presumption that a home service provider has ex-*
8 *ercised due diligence if such home service provider dem-*
9 *onstrates that it has—*

10 “(1) expended reasonable resources to implement
11 and maintain an appropriately detailed electronic
12 database of street address assignments to taxing juris-
13 dictions;

14 “(2) implemented and maintained reasonable in-
15 ternal controls to promptly correct misassignments of
16 street addresses to taxing jurisdictions; and

17 “(3) used all reasonably obtainable and usable
18 data pertaining to municipal annexations,
19 incorporations, reorganizations and any other
20 changes in jurisdictional boundaries that materially
21 affect the accuracy of the electronic database.

22 “(b) *TERMINATION OF SAFE HARBOR.*—Subsection (a)
23 *applies to a home service provider that is in compliance*
24 *with the requirements of subsection (a), with respect to a*

1 *State for which an electronic database is not provided under*
 2 *section 804 until the later of—*

3 “(1) 18 months after the nationwide standard
 4 *numeric code described in section 804(a) has been ap-*
 5 *proved by the Federation of Tax Administrators and*
 6 *the Multistate Tax Commission; or*

7 “(2) 6 months after that State or a designated
 8 *database provider in that State provides the electronic*
 9 *database as prescribed in section 804(a).*

10 **“SEC. 806. CORRECTION OF ERRONEOUS DATA FOR PLACE**
 11 **OF PRIMARY USE.**

12 “(a) *IN GENERAL.—A taxing jurisdiction, or a State*
 13 *on behalf of any taxing jurisdiction or taxing jurisdictions*
 14 *within such State, may—*

15 “(1) *determine that the address used for purposes*
 16 *of determining the taxing jurisdictions to which taxes,*
 17 *charges, or fees for mobile telecommunications services*
 18 *are remitted does not meet the definition of place of*
 19 *primary use in section 809(3) and give binding no-*
 20 *tice to the home service provider to change the place*
 21 *of primary use on a prospective basis from the date*
 22 *of notice of determination if—*

23 “(A) *where the taxing jurisdiction making*
 24 *such determination is not a State, such taxing*
 25 *jurisdiction obtains the consent of all affected*

1 *taxing jurisdictions within the State before giv-*
2 *ing such notice of determination; and*

3 *“(B) the customer is given an opportunity,*
4 *prior to such notice of determination, to dem-*
5 *onstrate in accordance with applicable State or*
6 *local tax, charge, or fee administrative proce-*
7 *dures that the address is the customer’s place of*
8 *primary use;*

9 *“(2) determine that the assignment of a taxing*
10 *jurisdiction by a home service provider under section*
11 *805 does not reflect the correct taxing jurisdiction and*
12 *give binding notice to the home service provider to*
13 *change the assignment on a prospective basis from the*
14 *date of notice of determination if—*

15 *“(A) where the taxing jurisdiction making*
16 *such determination is not a State, such taxing*
17 *jurisdiction obtains the consent of all affected*
18 *taxing jurisdictions within the State before giv-*
19 *ing such notice of determination; and*

20 *“(B) the home service provider is given an*
21 *opportunity to demonstrate in accordance with*
22 *applicable State or local tax, charge, or fee ad-*
23 *ministrative procedures that the assignment re-*
24 *fects the correct taxing jurisdiction.*

1 **“SEC. 807. DUTY OF HOME SERVICE PROVIDER REGARDING**
2 **PLACE OF PRIMARY USE.**

3 “(a) *PLACE OF PRIMARY USE.*—A home service pro-
4 vider is responsible for obtaining and maintaining the cus-
5 tomer’s place of primary use (as defined in section 809).
6 Subject to section 806, and if the home service provider’s
7 reliance on information provided by its customer is in good
8 faith, a home service provider—

9 “(1) may rely on the applicable residential or
10 business street address supplied by the home service
11 provider’s customer; and

12 “(2) is not liable for any additional taxes,
13 charges, or fees based on a different determination of
14 the place of primary use for taxes, charges or fees that
15 are customarily passed on to the customer as a sepa-
16 rate itemized charge.

17 “(b) *ADDRESS UNDER EXISTING AGREEMENTS.*—Ex-
18 cept as provided in section 806, a home service provider
19 may treat the address used by the home service provider
20 for tax purposes for any customer under a service contract
21 or agreement in effect 2 years after the date of enactment
22 of the Wireless Telecommunications Sourcing and Privacy
23 Act as that customer’s place of primary use for the remain-
24 ing term of such service contract or agreement, excluding
25 any extension or renewal of such service contract or agree-
26 ment, for purposes of determining the taxing jurisdictions

1 *to which taxes, charges, or fees on charges for mobile tele-*
2 *communications services are remitted.*

3 **“SEC. 808. SCOPE; SPECIAL RULES.**

4 “(a) *TITLE DOES NOT SUPERSEDE CUSTOMER’S LI-*
5 *ABILITY TO TAXING JURISDICTION.*—*Nothing in this title*
6 *modifies, impairs, supersedes, or authorizes the modifica-*
7 *tion, impairment, or supersession of, any law allowing a*
8 *taxing jurisdiction to collect a tax, charge, or fee from a*
9 *customer that has failed to provide its place of primary*
10 *use.*

11 “(b) *ADDITIONAL TAXABLE CHARGES.*—*If a taxing ju-*
12 *risdiction does not otherwise subject charges for mobile tele-*
13 *communications services to taxation and if these charges*
14 *are aggregated with and not separately stated from charges*
15 *that are subject to taxation, then the charges for otherwise*
16 *non-taxable mobile telecommunications services may be sub-*
17 *ject to taxation unless the home service provider can reason-*
18 *ably identify charges not subject to such tax, charge, or fee*
19 *from its books and records that are kept in the regular*
20 *course of business.*

21 “(c) *NON-TAXABLE CHARGES.*—*If a taxing jurisdic-*
22 *tion does not subject charges for mobile telecommunications*
23 *services to taxation, a customer may not rely upon the non-*
24 *taxability of charges for mobile telecommunications services*
25 *unless the customer’s home service provider separately states*

1 *the charges for non-taxable mobile telecommunications serv-*
 2 *ices from taxable charges or the home service provider elects,*
 3 *after receiving a written request from the customer in the*
 4 *form required by the provider, to provide verifiable data*
 5 *based upon the home service provider's books and records*
 6 *that are kept in the regular course of business that reason-*
 7 *ably identifies the nontaxable charges.*

8 “(d) *REFERENCES TO REGULATIONS.*—Any reference
 9 *in this title to the Commission's regulations is a reference*
 10 *to those regulations as they were in effect on June 1, 1999.*

11 **“SEC. 809. DEFINITIONS.**

12 *“In this title:*

13 “(1) *CHARGES FOR MOBILE TELECOMMUNI-*
 14 *CATIONS SERVICES.*—The term ‘charges for mobile
 15 *telecommunications services’ means any charge for, or*
 16 *associated with, the provision of commercial mobile*
 17 *radio service, as defined in section 20.3 of the Com-*
 18 *mission's regulations (47 C.F.R. 20.3), or any charge*
 19 *for, or associated with, a service provided as an ad-*
 20 *junct to a commercial mobile radio service, that is*
 21 *billed to the customer by or for the customer's home*
 22 *service provider regardless of whether individual*
 23 *transmissions originate or terminate within the li-*
 24 *censed service area of the home service provider.*

1 “(2) *TAXING JURISDICTION.*—The term ‘taxing
2 jurisdiction’ means any of the several States, the Dis-
3 trict of Columbia, or any territory or possession of the
4 United States, any municipality, city, county, town-
5 ship, parish, transportation district, or assessment ju-
6 risdiction, or any other political subdivision within
7 the territorial limits of the United States with the au-
8 thority to impose a tax, charge, or fee.

9 “(3) *PLACE OF PRIMARY USE.*—The term ‘place
10 of primary use’ means the street address representa-
11 tive of where the customer’s use of the mobile tele-
12 communications service primarily occurs, which must
13 be—

14 “(A) either the residential street address or
15 the primary business street address of the cus-
16 tomer; and

17 “(B) within the licensed service area of the
18 home service provider.

19 “(4) *LICENSED SERVICE AREA.*—The term ‘li-
20 censed service area’ means the geographic area in
21 which the home service provider is authorized by law
22 or contract to provide commercial mobile radio serv-
23 ice to the customer.

24 “(5) *HOME SERVICE PROVIDER.*—The term
25 ‘home service provider’ means the facilities-based car-

rier or reseller with which the customer contracts for
the provision of mobile telecommunications services.

“(6) CUSTOMER.—

“(A) IN GENERAL.—The term ‘customer’
means—

“(i) the person or entity that contracts
with the home service provider for mobile
telecommunications services; or

“(ii) where the end user of mobile tele-
communications services is not the con-
tracting party, the end user of the mobile
telecommunications service, but this clause
applies only for the purpose of determining
the place of primary use.

“(B) The term ‘customer’ does not include—

“(i) a reseller of mobile telecommuni-
cations service; or

“(ii) a serving carrier under an ar-
rangement to serve the customer outside the
home service provider’s licensed service
area.

“(7) DESIGNATED DATABASE PROVIDER.—The
term “designated database provider” means a cor-
poration, association, or other entity representing all
the political subdivisions of a State that is—

1 “(A) responsible for providing the electronic
2 database prescribed in section 804(a) if the State
3 has not provided such electronic database; and

4 “(B) sanctioned by municipal and county
5 associations or leagues of the State whose respon-
6 sibility it would otherwise be to provide the elec-
7 tronic database prescribed by this title.

8 “(8) *PREPAID TELEPHONE CALLING SERVICES.*—
9 The term ‘prepaid telephone calling service’ means the
10 right to purchase exclusively telecommunications serv-
11 ices that must be paid for in advance, that enables the
12 origination of calls using an access number, author-
13 ization code, or both, whether manually or electroni-
14 cally dialed, if the remaining amount of units of serv-
15 ice that have been prepaid is known by the provider
16 of the prepaid service on a continuous basis.

17 “(9) *RESELLER.*—The term ‘reseller’—

18 “(A) means a provider who purchases tele-
19 communications services from another tele-
20 communications service provider and then re-
21 sells, uses as a component part of, or integrates
22 the purchased services into a mobile tele-
23 communications service; but

24 “(B) does not include a serving carrier with
25 which a home service provider arranges for the

1 *services to its customers outside the home service*
 2 *provider’s licensed service area.*

3 “(10) *SERVING CARRIER.*—*The term ‘serving*
 4 *carrier’ means a facilities-based carrier providing*
 5 *mobile telecommunications service to a customer out-*
 6 *side a home service provider’s or reseller’s licensed*
 7 *service area.*

8 “(11) *MOBILE TELECOMMUNICATIONS SERV-*
 9 *ICE.*—*The term ‘mobile telecommunications service’*
 10 *means commercial mobile radio service, as defined in*
 11 *section 20.3 of the Commission’s regulations (47*
 12 *C.F.R. 20.3).*

13 “(12) *ENHANCED ZIP CODE.*—*The term ‘en-*
 14 *hanced zip code’ means a United States postal zip*
 15 *code of 9 or more digits.*

16 **“SEC. 810. COMMISSION NOT TO HAVE JURISDICTION OF**
 17 **TITLE.**

18 *“Notwithstanding any other provision of this Act, the*
 19 *Commission shall have no jurisdiction over the interpreta-*
 20 *tion, implementation, or enforcement of this title.*

21 **“SEC. 811. NONSEVERABILITY.**

22 *“If a court of competent jurisdiction enters a final*
 23 *judgment on the merits that is no longer subject to appeal,*
 24 *which substantially limits or impairs the essential elements*
 25 *of this title based on Federal statutory or Federal Constitu-*

1 tional grounds, or which determines that this title violates
 2 the United States Constitution, then the provisions of this
 3 title are null and void and of no effect.

4 **“SEC. 812. NO INFERENCE.**

5 “(a) *INTERNET TAX FREEDOM ACT.*—Nothing in this
 6 title may be construed as bearing on Congressional intent
 7 in enacting the Internet Tax Freedom Act or as affecting
 8 that Act in any way.

9 “(b) *TELECOMMUNICATIONS ACT OF 1996.*—Nothing
 10 in this title shall limit or otherwise affect the implementa-
 11 tion of the Telecommunications Act of 1996 or the amend-
 12 ments made by that Act.”.

13 (b) *EFFECTIVE DATE.*—The amendment made by sub-
 14 section (a) applies to customer bills issued after the first
 15 day of the first month beginning more than 2 years after
 16 the date of enactment of this Act.

17 **SEC. 4. GAO DETERMINATION OF FCC REGULATORY FEES.**

18 Within 180 days after the date of the enactment of this
 19 Act, the Comptroller General of the United States shall—

20 (1) conduct a review of the regulatory fees with
 21 respect to mobile telecommunications services that
 22 were collected during fiscal years 1998, 1999, and
 23 2000 by the Federal Communications Commission to
 24 determine—

1 (A) whether such fees were assessed in ac-
 2 cordance with section 9 of the Communications
 3 Act of 1934 (47 U.S.C. 159) and applicable pub-
 4 lic notices; and

5 (B) whether the Commission acquired infor-
 6 mation related to the assessment of such fees in
 7 a timely and accurate manner, and has main-
 8 tained such information, that is sufficient to
 9 support the transactions; and

10 (2) submit a report to the Congress regarding
 11 such review and determinations.

12 **SEC. 5. COMMERCE IN ELECTRONIC EAVESDROPPING DE-**
 13 **VICES.**

14 (a) *PROHIBITION ON MODIFICATION.*—Section 302(b)
 15 of the Communications Act of 1934 (47 U.S.C. 302a(b)) is
 16 amended by inserting before the period at the end thereof
 17 the following: “, or modify any such device, equipment, or
 18 system in any manner that causes such device, equipment,
 19 or system to fail to comply with such regulations”.

20 (b) *PROHIBITION ON COMMERCE IN SCANNING RE-*
 21 *CEIVERS.*—Section 302(d) of such Act (47 U.S.C. 302a(d))
 22 is amended to read as follows:

23 “(d) *EQUIPMENT AUTHORIZATION REGULATIONS.*—

24 “(1) *PRIVACY PROTECTIONS REQUIRED.*—The
 25 Commission shall prescribe regulations, and review

1 *and revise such regulations as necessary in response*
2 *to subsequent changes in technology or behavior, deny-*
3 *ing equipment authorization (under part 15 of title*
4 *47, Code of Federal Regulations, or any other part of*
5 *that title) for any scanning receiver that is capable*
6 *of—*

7 “(A) *receiving transmissions in the fre-*
8 *quencies that are allocated to the domestic cel-*
9 *lular radio telecommunications service or the*
10 *personal communications service;*

11 “(B) *readily being altered to receive trans-*
12 *missions in such frequencies;*

13 “(C) *being equipped with decoders that—*

14 “(i) *convert digital domestic cellular*
15 *radio telecommunications service, personal*
16 *communications service, or protected spe-*
17 *cialized mobile radio service transmissions*
18 *to analog voice audio; or*

19 “(ii) *convert protected paging service*
20 *transmissions to alphanumeric text; or*

21 “(D) *being equipped with devices that other-*
22 *wise decode encrypted radio transmissions for*
23 *the purposes of unauthorized interception.*

24 “(2) *PRIVACY PROTECTIONS FOR SHARED FRE-*
25 *QUENCIES.—The Commission shall, with respect to*

1 *scanning receivers capable of receiving transmissions*
2 *in frequencies that are used by commercial mobile*
3 *services and that are shared by public safety users,*
4 *examine methods, and may prescribe such regulations*
5 *as may be necessary, to enhance the privacy of users*
6 *of such frequencies.*

7 “(3) *TAMPERING PREVENTION.*—*In prescribing*
8 *regulations pursuant to paragraph (1), the Commis-*
9 *sion shall consider defining ‘capable of readily being*
10 *altered’ to require scanning receivers to be manufac-*
11 *tured in a manner that effectively precludes alter-*
12 *ation of equipment features and functions as nec-*
13 *essary to prevent commerce in devices that may be*
14 *used unlawfully to intercept or divulge radio commu-*
15 *nication.*

16 “(4) *WARNING LABELS.*—*In prescribing regula-*
17 *tions under paragraph (1), the Commission shall con-*
18 *sider requiring labels on scanning receivers warning*
19 *of the prohibitions in Federal law on intentionally*
20 *intercepting or divulging radio communications.*

21 “(5) *DEFINITIONS.*—*As used in this subsection,*
22 *the term ‘protected’ means secured by an electronic*
23 *method that is not published or disclosed except to au-*
24 *thorized users, as further defined by Commission reg-*
25 *ulation.”.*

1 (c) *IMPLEMENTING REGULATIONS.*—Within 90 days
 2 after the date of enactment of this Act, the Federal Commu-
 3 nications Commission shall prescribe amendments to its
 4 regulations for the purposes of implementing the amend-
 5 ments made by this section.

6 **SEC. 6. UNAUTHORIZED INTERCEPTION OR PUBLICATION**
 7 **OF COMMUNICATIONS.**

8 Section 705 of the Communications Act of 1934 (47
 9 U.S.C. 605) is amended—

10 (1) in the heading of such section, by inserting
 11 **“INTERCEPTION OR”** after **“UNAUTHORIZED”**;

12 (2) in the first sentence of subsection (a), by
 13 striking *“Except as authorized by chapter 119, title*
 14 *18, United States Code, no person”* and inserting *“No*
 15 *person”*;

16 (3) in the second sentence of subsection (a)—

17 (A) by inserting *“intentionally”* before
 18 *“intercept”*; and

19 (B) by striking *“communication and di-*
 20 *vulge”* and inserting *“communication, and no*
 21 *person having intercepted such a communication*
 22 *shall intentionally divulge”*;

23 (4) in the fourth sentence of subsection (a)—

24 (A) by inserting *“(A)”* after *“intercepted,*
 25 *shall”*; and

1 (B) by striking “thereof) or” and inserting
2 “thereof); or (B)”;

3 (5) by striking the last sentence of subsection (a)
4 and inserting the following: “Nothing in this sub-
5 section prohibits an interception or disclosure of a
6 communication as authorized by chapter 119 of title
7 18, United States Code.”;

8 (6) in subsection (e)(1)—

9 (A) by striking “fined not more than \$2,000
10 or”; and

11 (B) by inserting “or fined under title 18,
12 United States Code,” after “6 months,”;

13 (7) in subsection (e)(3), by striking “any viola-
14 tion” and inserting “any receipt, interception, divul-
15 gence, publication, or utilization of any communica-
16 tion in violation”;

17 (8) in subsection (e)(4), by striking “any other
18 activity prohibited by subsection (a)” and inserting
19 “any receipt, interception, divulgence, publication, or
20 utilization of any communication in violation of sub-
21 section (a)”;

22 (9) by adding at the end of subsection (e) the fol-
23 lowing new paragraph:

24 “(7) Notwithstanding any other investigative or en-
25 forcement activities of any other Federal agency, the Com-

1 *mission shall investigate alleged violations of this section*
2 *and may proceed to initiate action under section 503 of*
3 *this Act to impose forfeiture penalties with respect to such*
4 *violation upon conclusion of the Commission's investiga-*
5 *tion.”.*

6 **SECTION 1. SHORT TITLE.**

7 **This Act may be cited as the “Wireless**
8 **Telecommunications Privacy Act of 2000”.**

9 **SEC. 2. GAO DETERMINATION OF FCC REGULATORY FEES.**

10 **Within 180 days after the date of the en-**
11 **actment of this Act, the Comptroller General**
12 **of the United States shall conduct a review of**
13 **the annual regulatory fees collected by the**
14 **Federal Communications Commission pursu-**
15 **ant to section 9 of the Communications Act of**
16 **1934 (47 U.S.C. 159) to determine whether**
17 **such fees have been accurately assessed since**
18 **their inception and shall submit a report to**
19 **the Congress regarding such review and de-**
20 **termination.**

21 **SEC. 3. COMMERCE IN ELECTRONIC EAVESDROPPING DE-**
22 **VICES.**

23 **(a) PROHIBITION ON MODIFICATION.—Sec-**
24 **tion 302(b) of the Communications Act of 1934**
25 **(47 U.S.C. 302a(b)) is amended by inserting be-**

1 fore the period at the end thereof the fol-
2 lowing: “, or modify any such device, equip-
3 ment, or system in any manner that causes
4 such device, equipment, or system to fail to
5 comply with such regulations”.

6 (b) PROHIBITION ON COMMERCE IN SCANNING
7 RECEIVERS.—Section 302(d) of such Act (47
8 U.S.C. 302a(d)) is amended to read as follows:

9 “(d) EQUIPMENT AUTHORIZATION REGULA-
10 TIONS.—

11 “(1) PRIVACY PROTECTIONS REQUIRED.—

12 The Commission shall prescribe regula-
13 tions, and review and revise such regula-
14 tions as necessary in response to subse-
15 quent changes in technology or behavior,
16 denying equipment authorization (under
17 part 15 of title 47, Code of Federal Regu-
18 lations, or any other part of that title) for
19 any scanning receiver that is capable of—

20 “(A) receiving transmissions in
21 the frequencies that are allocated to
22 the domestic cellular radio tele-
23 communications service or the per-
24 sonal communications service;

1 “(B) readily being altered to re-
2 ceive transmissions in such fre-
3 quencies;

4 “(C) being equipped with decod-
5 ers that—

6 “(i) convert digital domestic
7 cellular radio telecommunications
8 service, personal communications
9 service, or protected specialized
10 mobile radio service trans-
11 missions to analog voice audio; or

12 “(ii) convert protected paging
13 service transmissions to alpha-
14 numeric text; or

15 “(D) being equipped with devices
16 that otherwise decode encrypted
17 radio transmissions for the purposes
18 of unauthorized interception.

19 “(2) **PRIVACY PROTECTIONS FOR SHARED**
20 **FREQUENCIES.—**The Commission shall,
21 with respect to scanning receivers capa-
22 ble of receiving transmissions in fre-
23 quencies that are used by commercial
24 mobile services and that are shared by
25 public safety users, examine methods,

1 and may prescribe such regulations as
2 may be necessary, to enhance the privacy
3 of users of such frequencies.

4 “(3) TAMPERING PREVENTION.—In pre-
5 scribing regulations pursuant to para-
6 graph (1), the Commission shall consider
7 defining ‘capable of readily being altered’
8 to require scanning receivers to be manu-
9 factured in a manner that effectively pre-
10 cludes alteration of equipment features
11 and functions as necessary to prevent
12 commerce in devices that may be used
13 unlawfully to intercept or divulge radio
14 communication.

15 “(4) WARNING LABELS.—In prescribing
16 regulations under paragraph (1), the
17 Commission shall consider requiring la-
18 bels on scanning receivers warning of the
19 prohibitions in Federal law on inten-
20 tionally intercepting or divulging radio
21 communications.

22 “(5) DEFINITIONS.—As used in this sub-
23 section, the term ‘protected’ means se-
24 cured by an electronic method that is not
25 published or disclosed except to author-

1 ized users, as further defined by Commis-
2 sion regulation.”.

3 (c) **IMPLEMENTING REGULATIONS.—Within**
4 **90 days after the date of enactment of this Act,**
5 **the Federal Communications Commission**
6 **shall prescribe amendments to its regulations**
7 **for the purposes of implementing the amend-**
8 **ments made by this section.**

9 **SEC. 4. UNAUTHORIZED INTERCEPTION OR PUBLICATION**
10 **OF COMMUNICATIONS.**

11 **Section 705 of the Communications Act of**
12 **1934 (47 U.S.C. 605) is amended—**

13 (1) **in the heading of such section, by**
14 **inserting “INTERCEPTION OR” after “UNAU-**
15 **THORIZED”;**

16 (2) **in the first sentence of subsection**
17 **(a), by striking “Except as authorized by**
18 **chapter 119, title 18, United States Code,**
19 **no person” and inserting “No person”;**

20 (3) **in the second sentence of sub-**
21 **section (a)—**

22 (A) **by inserting “intentionally”**
23 **before “intercept”; and**

24 (B) **by striking “communication**
25 **and divulge” and inserting “commu-**

1 **nication, and no person having inter-**
2 **cepted such a communication shall**
3 **intentionally divulge”;**

4 **(4) in the fourth sentence of sub-**
5 **section (a)—**

6 **(A) by inserting “(A)” after “inter-**
7 **cepted, shall”; and**

8 **(B) by striking “thereof) or” and**
9 **inserting “thereof); or (B)”;**

10 **(5) by striking the last sentence of**
11 **subsection (a) and inserting the fol-**
12 **lowing: “Nothing in this subsection pro-**
13 **hibits an interception or disclosure of a**
14 **communication as authorized by chapter**
15 **119 of title 18, United States Code.”;**

16 **(6) in subsection (e)(1)—**

17 **(A) by striking “fined not more**
18 **than \$2,000 or”; and**

19 **(B) by inserting “or fined under**
20 **title 18, United States Code,” after “6**
21 **months,”;**

22 **(7) in subsection (e)(3), by striking**
23 **“any violation” and inserting “any re-**
24 **ceipt, interception, divulgence, publica-**

1 **tion, or utilization of any communication**
2 **in violation”;**

3 **(8) in subsection (e)(4), by striking**
4 **“any other activity prohibited by sub-**
5 **section (a)” and inserting “any receipt,**
6 **interception, divulgence, publication, or**
7 **utilization of any communication in vio-**
8 **lation of subsection (a)”;** and

9 **(9) by adding at the end of subsection**
10 **(e) the following new paragraph:**

11 **“(7) Notwithstanding any other investiga-**
12 **tive or enforcement activities of any other**
13 **Federal agency, the Commission shall inves-**
14 **tigate alleged violations of this section and**
15 **may proceed to initiate action under section**
16 **503 of this Act to impose forfeiture penalties**
17 **with respect to such violation upon conclu-**
18 **sion of the Commission’s investigation.”.**

Amend the title so as to read: “A bill to amend the Communications Act of 1934 to strengthen and clarify prohibitions on electronic eavesdropping, and for other purposes.”.

Union Calendar No. 409

106TH CONGRESS
2D SESSION

H. R. 3489

[Report No. 106–725, Parts I and II]

A BILL

To amend the Communications Act of 1934 to regulate interstate commerce in the use of mobile telephones and to strengthen and clarify prohibitions on electronic eavesdropping, and for other purposes.

JULY 11, 2000

Reported from the Committee on Commerce with an amendment

JULY 11, 2000

Reported from the Committee on the Judiciary with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed