

106TH CONGRESS  
1ST SESSION

# H. R. 3489

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.

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## 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

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## 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”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds the following:

3 (1) The provision of mobile telecommunications  
4 services is a matter of interstate commerce within  
5 the jurisdiction of the United States Congress under  
6 Article I, Section 8 of the United States Constitu-  
7 tion. Certain aspects of mobile telecommunications  
8 technologies and services do not respect, and operate  
9 independently of, State and local jurisdictional  
10 boundaries.

11 (2) The mobility afforded to millions of Amer-  
12 ican consumers by mobile telecommunications serv-  
13 ices helps to fuel the American economy, facilitate  
14 the development of the information superhighway  
15 and provide important safety benefits.

16 (3) Users of mobile telecommunications services  
17 can originate a call in one State or local jurisdiction  
18 and travel through other States or local jurisdictions  
19 during the course of the call. These circumstances  
20 make it more difficult to track the separate seg-  
21 ments of a particular call with all of the States and  
22 local jurisdictions involved with the call. In addition,  
23 expanded home calling areas, bundled service offer-  
24 ings and other marketing advances make it increas-  
25 ingly difficult to assign each transaction to a specific  
26 taxing jurisdiction.

1           (4) State and local taxes imposed on mobile  
2 telecommunications services that are not consistently  
3 based can subject consumers, businesses and others  
4 engaged in interstate commerce to multiple, con-  
5 fusing and burdensome State and local taxes and re-  
6 sult in higher costs to consumers and the industry.

7           (5) State and local taxes that are not consist-  
8 ently based can result in some telecommunications  
9 revenues inadvertently escaping State and local tax-  
10 ation altogether, thereby violating standards of tax  
11 fairness, creating inequities among competitors in  
12 the telecommunications market and depriving State  
13 and local governments of needed tax revenues.

14           (6) Because State and local tax laws and regu-  
15 lations of many jurisdictions were established before  
16 the proliferation of mobile telecommunications serv-  
17 ices, the application of these laws to the provision of  
18 mobile telecommunications services may produce  
19 conflicting or unintended tax results.

20           (7) State and local governments provide essen-  
21 tial public services, including services that Congress  
22 encourages State and local governments to under-  
23 take in partnership with the Federal government for  
24 the achievement of important national policy goals.

1           (8) State and local governments provide serv-  
2           ices that support the flow of interstate commerce,  
3           including services that support the use and develop-  
4           ment of mobile telecommunications services.

5           (9) State governments as sovereign entities in  
6           our Federal system may require that interstate com-  
7           merce conducted within their borders pay its fair  
8           share of tax to support the governmental services  
9           provided by those governments.

10          (10) Local governments as autonomous subdivi-  
11          sions of a State government may require that inter-  
12          state commerce conducted within their borders pay  
13          its fair share of tax to support the governmental  
14          services provided by those governments.

15          (11) To balance the needs of interstate com-  
16          merce and the mobile telecommunications industry  
17          with the legitimate role of State and local govern-  
18          ments in our system of federalism, Congress needs  
19          to establish a uniform and coherent national policy  
20          regarding the taxation of mobile telecommunications  
21          services through the exercise of its constitutional au-  
22          thority to regulate interstate commerce.

23          (12) Congress also recognizes that the solution  
24          established by this legislation is a necessarily prac-  
25          tical one and must provide for a system of State and

1 local taxation of mobile telecommunications services  
2 that in the absence of this solution would not other-  
3 wise occur. To this extent, Congress exercises its  
4 power to provide a reasonable solution to otherwise  
5 insoluble problems of multi-jurisdictional commerce.

6 **SEC. 3. AMENDMENT OF COMMUNICATIONS ACT OF 1934 TO**  
7 **PROVIDE RULES FOR DETERMINING STATE**  
8 **AND LOCAL GOVERNMENT TREATMENT OF**  
9 **CHARGES RELATED TO MOBILE TELE-**  
10 **COMMUNICATIONS SERVICES.**

11 (a) IN GENERAL.—The Communications Act of 1934  
12 (47 U.S.C. 151 et seq.) is amended by adding at the end  
13 thereof the following:

14 **“TITLE VIII—STATE AND LOCAL**  
15 **TREATMENT OF CHARGES**  
16 **FOR MOBILE TELECOMMUNI-**  
17 **CATIONS SERVICES**

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

19 “(a) IN GENERAL.—This title applies to any tax,  
20 charge, or fee levied by a taxing jurisdiction as a fixed  
21 charge for each customer or measured by gross amounts  
22 charged to customers for mobile telecommunications serv-  
23 ices, regardless of whether such tax, charge, or fee is im-  
24 posed on the vendor or customer of the service and regard-

1 less of the terminology used to describe the tax, charge,  
2 or fee.

3 “(b) GENERAL EXCEPTIONS.—This title does not  
4 apply to—

5 “(1) any tax, charge, or fee levied upon or  
6 measured by the net income, capital stock, net  
7 worth, or property value of the provider of mobile  
8 telecommunications service;

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

12 “(3) any tax, charge, or fee that represents  
13 compensation for a mobile telecommunications serv-  
14 ice provider’s use of public rights of way or other  
15 public property, provided that such tax, charge, or  
16 fee is not levied by the taxing jurisdiction as a fixed  
17 charge for each customer or measured by gross  
18 amounts charged to customers for mobile tele-  
19 communication services; or

20 “(4) any fee related to obligations under section  
21 254 of this Act.”.

22 “(c) SPECIFIC EXCEPTIONS.—This title—

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

1           “(2) does not affect the taxability of either the  
2           initial sale of mobile telecommunications services or  
3           subsequent resale, whether as sales of the service  
4           alone or as a part of a bundled product, where the  
5           Internet Tax Freedom Act would preclude a taxing  
6           jurisdiction from subjecting the charges of the sale  
7           of these mobile telecommunications services to a tax,  
8           charge, or fee but this section provides no evidence  
9           of the intent of Congress with respect to the applica-  
10          bility of the Internet Tax Freedom Act to such  
11          charges; and

12           “(3) does not apply to the determination of the  
13          taxing situs of air-ground radiotelephone service as  
14          defined in section 22.99 of the Commission’s regula-  
15          tions (47 C.F.R. 22.99).

16 **“SEC. 802. SOURCING RULES.**

17           “(a) IN GENERAL.—Notwithstanding the law of any  
18          State or political subdivision thereof to the contrary, mo-  
19          bile telecommunications services provided in a taxing juris-  
20          diction to a customer, the charges for which are billed by  
21          or for the customer’s home service provider, shall be  
22          deemed to be provided by the customer’s home service pro-  
23          vider.

24           “(b) JURISDICTION.—All charges for mobile tele-  
25          communications services that are deemed to be provided

1 by the customer’s home service provider under this title  
2 are authorized to be subjected to tax, charge, or fee by  
3 the taxing jurisdictions whose territorial limits encompass  
4 the customer’s place of primary use, regardless of where  
5 the mobile telecommunication services originate, terminate  
6 or pass through, and no other taxing jurisdiction may im-  
7 pose taxes, charges, or fees on charges for such mobile  
8 telecommunications services.

9 **“SEC. 803. LIMITATIONS.**

10 “This title does not—

11 “(1) provide authority to a taxing jurisdiction  
12 to impose a tax, charge, or fee that the laws of the  
13 jurisdiction do not authorize the jurisdiction to im-  
14 pose; or

15 “(2) modify, impair, supersede, or authorize the  
16 modification, impairment, or supersession of, the law  
17 of any taxing jurisdiction pertaining to taxation ex-  
18 cept as expressly provided in this title.

19 **“SEC. 804. ELECTRONIC DATABASES FOR NATIONWIDE**  
20 **STANDARD NUMERIC JURISDICTIONAL**  
21 **CODES.**

22 “(a) **ELECTRONIC DATABASE.**—A State may provide  
23 an electronic database to a home service provider or, if  
24 a State does not provide such an electronic database to  
25 home service providers, then the designated database pro-

1 vider may provide an electronic database to a home service  
2 provider. The electronic database, whether provided by the  
3 State or the designated database provider, shall be pro-  
4 vided in a format approved by the American National  
5 Standards Institute's Accredited Standards Committee  
6 X12, that, allowing for de minimis deviations, designates  
7 for each street address in the State, including to the ex-  
8 tent practicable, any multiple postal street addresses ap-  
9 plicable to one street location, the appropriate taxing juris-  
10 diction, and the appropriate code for each taxing jurisdic-  
11 tion, for each level of taxing jurisdiction, identified by one  
12 nationwide standard numeric code. The electronic data-  
13 base shall also provide the appropriate code for each street  
14 address with respect to political subdivisions which are not  
15 taxing jurisdictions when reasonably needed to determine  
16 the proper taxing jurisdiction. The nationwide standard  
17 numeric codes shall contain the same number of numeric  
18 digits with each digit or combination of digits referring  
19 to the same level of taxing jurisdiction throughout the  
20 United States using a format similar to FIPS 55-3 or  
21 other appropriate standard approved by the Federation of  
22 Tax Administrators and the Multistate Tax Commission,  
23 or their successors. Each address shall be provided in  
24 standard postal format.

1       “(b) NOTICE; UPDATES.—A State or designated  
2 database provider that provides or maintains an electronic  
3 database described in subsection (a) shall provide notice  
4 of the availability of the then current electronic database,  
5 and any subsequent revisions thereof, by publication in the  
6 manner normally employed for the publication of informa-  
7 tional tax, charge, or fee notices to taxpayers in that  
8 State.

9       “(c) USER HELD HARMLESS.—A home service pro-  
10 vider using the data contained in the electronic database  
11 described in subsection (a) shall be held harmless from  
12 any tax, charge, or fee liability that otherwise would be  
13 due solely as a result of any error or omission in the elec-  
14 tronic database provided by a State or designated data-  
15 base provider. The home service provider shall reflect  
16 changes made to the electronic database during a calendar  
17 quarter no later than 30 days after the end of that cal-  
18 endar quarter for each State that issues notice of the  
19 availability of an electronic database reflecting such  
20 changes under subsection (b).

21 **“SEC. 805. PROCEDURE WHERE NO ELECTRONIC DATABASE**  
22 **PROVIDED.**

23       “(a) IN GENERAL.—If neither a State nor designated  
24 database provider provides an electronic database under  
25 section 804, a home service provider shall be held harmless

1 from any tax, charge, or fee liability in that State that  
2 otherwise would be due solely as a result of an assignment  
3 of a street address to an incorrect taxing jurisdiction if,  
4 subject to section 806, the home service provider employs  
5 an enhanced zip code to assign each street address to a  
6 specific taxing jurisdiction for each level of taxing jurisdic-  
7 tion and exercises due diligence at each level of taxing ju-  
8 risdiction to ensure that each such street address is as-  
9 signed to the correct taxing jurisdiction. Where an en-  
10 hanced zip code overlaps boundaries of taxing jurisdictions  
11 of the same level, the home service provider must des-  
12 ignate one specific jurisdiction within such enhanced zip  
13 code for use in taxing the activity for that enhanced zip  
14 code for each level of taxing jurisdiction. Any enhanced  
15 zip code assignment changed in accordance with section  
16 806 is deemed to be in compliance with this section. For  
17 purposes of this section, there is a rebuttable presumption  
18 that a home service provider has exercised due diligence  
19 if such home service provider demonstrates that it has—  
20           “(1) expended reasonable resources to imple-  
21           ment and maintain an appropriately detailed elec-  
22           tronic database of street address assignments to tax-  
23           ing jurisdictions;

1           “(2) implemented and maintained reasonable  
2 internal controls to promptly correct misassignments  
3 of street addresses to taxing jurisdictions; and

4           “(3) used all reasonably obtainable and usable  
5 data pertaining to municipal annexations,  
6 incorporations, reorganizations and any other  
7 changes in jurisdictional boundaries that materially  
8 affect the accuracy of the electronic database.

9           “(b) **TERMINATION OF SAFE HARBOR.**—Subsection  
10 (a) applies to a home service provider that is in compliance  
11 with the requirements of subsection (a), with respect to  
12 a State for which an electronic database is not provided  
13 under section 804 until the later of—

14           “(1) 18 months after the nationwide standard  
15 numeric code described in section 804(a) has been  
16 approved by the Federation of Tax Administrators  
17 and the Multistate Tax Commission; or

18           “(2) 6 months after that State or a designated  
19 database provider in that State provides the elec-  
20 tronic database as prescribed in section 804(a).

21 **“SEC. 806. CORRECTION OF ERRONEOUS DATA FOR PLACE**  
22 **OF PRIMARY USE.**

23           “(a) **IN GENERAL.**—A taxing jurisdiction, or a State  
24 on behalf of any taxing jurisdiction or taxing jurisdictions  
25 within such State, may—

1           “(1) determine that the address used for pur-  
2           poses of determining the taxing jurisdictions to  
3           which taxes, charges, or fees for mobile tele-  
4           communications services are remitted does not meet  
5           the definition of place of primary use in section  
6           809(3) and give binding notice to the home service  
7           provider to change the place of primary use on a  
8           prospective basis from the date of notice of deter-  
9           mination if—

10                   “(A) where the taxing jurisdiction making  
11                   such determination is not a State, such taxing  
12                   jurisdiction obtains the consent of all affected  
13                   taxing jurisdictions within the State before giv-  
14                   ing such notice of determination; and

15                   “(B) the customer is given an opportunity,  
16                   prior to such notice of determination, to dem-  
17                   onstrate in accordance with applicable State or  
18                   local tax, charge, or fee administrative proce-  
19                   dures that the address is the customer’s place  
20                   of primary use;

21           “(2) determine that the assignment of a taxing  
22           jurisdiction by a home service provider under section  
23           805 does not reflect the correct taxing jurisdiction  
24           and give binding notice to the home service provider

1 to change the assignment on a prospective basis  
2 from the date of notice of determination if—

3 “(A) where the taxing jurisdiction making  
4 such determination is not a State, such taxing  
5 jurisdiction obtains the consent of all affected  
6 taxing jurisdictions within the State before giv-  
7 ing such notice of determination; and

8 “(B) the home service provider is given an  
9 opportunity to demonstrate in accordance with  
10 applicable State or local tax, charge, or fee ad-  
11 ministrative procedures that the assignment re-  
12 flects the correct taxing jurisdiction.

13 **“SEC. 807. DUTY OF HOME SERVICE PROVIDER REGARDING**  
14 **PLACE OF PRIMARY USE.**

15 “(a) PLACE OF PRIMARY USE.—A home service pro-  
16 vider is responsible for obtaining and maintaining the cus-  
17 tomer’s place of primary use (as defined in section 809).  
18 Subject to section 806, and if the home service provider’s  
19 reliance on information provided by its customer is in good  
20 faith, a home service provider—

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

24 “(2) is not liable for any additional taxes,  
25 charges, or fees based on a different determination

1 of the place of primary use for taxes, charges or fees  
2 that are customarily passed on to the customer as  
3 a separate itemized charge.

4 “(b) ADDRESS UNDER EXISTING AGREEMENTS.—  
5 Except as provided in section 806, a home service provider  
6 may treat the address used by the home service provider  
7 for tax purposes for any customer under a service contract  
8 or agreement in effect 2 years after the date of enactment  
9 of the Wireless Telecommunications Sourcing and Privacy  
10 Act as that customer’s place of primary use for the re-  
11 maining term of such service contract or agreement, ex-  
12 cluding any extension or renewal of such service contract  
13 or agreement, for purposes of determining the taxing ju-  
14 risdictions to which taxes, charges, or fees on charges for  
15 mobile telecommunications services are remitted.

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

17 “(a) TITLE DOES NOT SUPERSEDE CUSTOMER’S LI-  
18 ABILITY TO TAXING JURISDICTION.—Nothing in this title  
19 modifies, impairs, supersedes, or authorizes the modifica-  
20 tion, impairment, or supersession of, any law allowing a  
21 taxing jurisdiction to collect a tax, charge, or fee from a  
22 customer that has failed to provide its place of primary  
23 use.

24 “(b) ADDITIONAL TAXABLE CHARGES.—If a taxing  
25 jurisdiction does not otherwise subject charges for mobile

1 telecommunications services to taxation and if these  
2 charges are aggregated with and not separately stated  
3 from charges that are subject to taxation, then the charges  
4 for otherwise non-taxable mobile telecommunications serv-  
5 ices may be subject to taxation unless the home service  
6 provider can reasonably identify charges not subject to  
7 such tax, charge, or fee from its books and records that  
8 are kept in the regular course of business.

9       “(c) NON-TAXABLE CHARGES.—If a taxing jurisdic-  
10 tion does not subject charges for mobile telecommuni-  
11 cations services to taxation, a customer may not rely upon  
12 the nontaxability of charges for mobile telecommuni-  
13 cations services unless the customer’s home service pro-  
14 vider separately states the charges for non-taxable mobile  
15 telecommunications services from taxable charges or the  
16 home service provider elects, after receiving a written re-  
17 quest from the customer in the form required by the pro-  
18 vider, to provide verifiable data based upon the home serv-  
19 ice provider’s books and records that are kept in the reg-  
20 ular course of business that reasonably identifies the non-  
21 taxable charges.

22       “(d) REFERENCES TO REGULATIONS.—Any ref-  
23 erence in this title to the Commission’s regulations is a  
24 reference to those regulations as they were in effect on  
25 June 1, 1999.

1 **“SEC. 809. DEFINITIONS.**

2 “In this title:

3 “(1) CHARGES FOR MOBILE TELECOMMUNI-  
4 CATIONS SERVICES.—The term ‘charges for mobile  
5 telecommunications services’ means any charge for,  
6 or associated with, the provision of commercial mo-  
7 bile radio service, as defined in section 20.3 of the  
8 Commission’s regulations (47 C.F.R. 20.3), or any  
9 charge for, or associated with, a service provided as  
10 an adjunct to a commercial mobile radio service,  
11 that is billed to the customer by or for the cus-  
12 tomer’s home service provider regardless of whether  
13 individual transmissions originate or terminate with-  
14 in the licensed service area of the home service pro-  
15 vider.

16 “(2) TAXING JURISDICTION.—The term ‘taxing  
17 jurisdiction’ means any of the several States, the  
18 District of Columbia, or any territory or possession  
19 of the United States, any municipality, city, county,  
20 township, parish, transportation district, or assess-  
21 ment jurisdiction, or any other political subdivision  
22 within the territorial limits of the United States with  
23 the authority to impose a tax, charge, or fee.

24 “(3) PLACE OF PRIMARY USE.—The term ‘place  
25 of primary use’ means the street address representa-  
26 tive of where the customer’s use of the mobile tele-

1 communications service primarily occurs, which must  
2 be either—

3 “(A) the residential street address or the  
4 primary business street address of the cus-  
5 tomer; and

6 “(B) within the licensed service area of the  
7 home service provider.

8 “(4) LICENSED SERVICE AREA.—The term ‘li-  
9 censed service area’ means the geographic area in  
10 which the home service provider is authorized by law  
11 or contract to provide commercial mobile radio serv-  
12 ice to the customer.

13 “(5) HOME SERVICE PROVIDER.—The term  
14 ‘home service provider’ means the facilities-based  
15 carrier or reseller with which the customer contracts  
16 for the provision of mobile telecommunications serv-  
17 ices.

18 “(6) CUSTOMER.—

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

21 “(i) the person or entity that con-  
22 tracts with the home service provider for  
23 mobile telecommunications services; or

24 “(ii) where the end user of mobile  
25 telecommunications services is not the con-

1           tracting party, the end user of the mobile  
2           telecommunications service, but this clause  
3           applies only for the purpose of determining  
4           the place of primary use.

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

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

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

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

17                   “(A) responsible for providing the elec-  
18                   tronic database prescribed in section 804(a) if  
19                   the State has not provided such electronic data-  
20                   base; and

21                   “(B) sanctioned by municipal and county  
22                   associations or leagues of the State whose re-  
23                   sponsibility it would otherwise be to provide the  
24                   electronic database prescribed by this title.

1           “(8) PREPAID TELEPHONE CALLING SERV-  
2           ICES.—The term ‘prepaid telephone calling service’  
3           means the right to purchase exclusively tele-  
4           communications services that must be paid for in  
5           advance, that enables the origination of calls using  
6           an access number, authorization code, or both,  
7           whether manually or electronically dialed, if the re-  
8           maining amount of units of service that have been  
9           prepaid is known by the provider of the prepaid  
10          service on a continuous basis.

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

12                 “(A) means a provider who purchases tele-  
13                 communications services from another tele-  
14                 communications service provider and then re-  
15                 sells, uses as a component part of, or integrates  
16                 the purchased services into a mobile tele-  
17                 communications service; but

18                 “(B) does not include a serving carrier  
19                 with which a home service provider arranges for  
20                 the services to its customers outside the home  
21                 service provider’s licensed service area.

22          “(10) SERVING CARRIER.—The term ‘serving  
23          carrier’ means a facilities-based carrier providing  
24          mobile telecommunications service to a customer

1 outside a home service provider's or reseller's li-  
2 censed service area.

3 “(11) MOBILE TELECOMMUNICATIONS SERV-  
4 ICE.—The term ‘mobile telecommunications service’  
5 means commercial mobile radio service, as defined in  
6 section 20.3 of the Commission’s regulations (47  
7 C.F.R. 20.3).

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

11 **“SEC. 810. COMMISSION NOT TO HAVE JURISDICTION OF**  
12 **TITLE.**

13 “Notwithstanding any other provision of this Act, the  
14 Commission shall have no jurisdiction over the interpreta-  
15 tion, implementation, or enforcement of this title.

16 **“SEC. 811. NONSEVERABILITY.**

17 “If a court of competent jurisdiction enters a final  
18 judgment on the merits that is no longer subject to appeal,  
19 which substantially limits or impairs the essential ele-  
20 ments of this title based on Federal statutory or Federal  
21 Constitutional grounds, or which determines that this title  
22 violates the United States Constitution, then the provi-  
23 sions of this title are null and void and of no effect.

1 **“SEC. 812. NO INFERENCE.**

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

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

10       (b) EFFECTIVE DATE.—The amendment made by  
11 subsection (a) applies to customer bills issued after the  
12 first day of the first month beginning more than 2 years  
13 after the date of enactment of this Act.

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

15       Within 180 days after the date of the enactment of  
16 this Act, the Comptroller General of the United States  
17 shall conduct a review of the annual regulatory fees col-  
18 lected by the Federal Communications Commission pursu-  
19 ant to section 9 of the Communications Act of 1934 (47  
20 U.S.C. 159) to determine whether such fees have been ac-  
21 curately assessed since their inception and shall submit  
22 a report to the Congress regarding such review and deter-  
23 mination.

1 **SEC. 5. COMMERCE IN ELECTRONIC EAVESDROPPING DE-**  
2 **VICES.**

3 (a) PROHIBITION ON MODIFICATION.—Section  
4 302(b) of the Communications Act of 1934 (47 U.S.C.  
5 302a(b)) is amended by inserting before the period at the  
6 end thereof the following: “, or modify any such device,  
7 equipment, or system in any manner that causes such de-  
8 vice, equipment, or system to fail to comply with such reg-  
9 ulations”.

10 (b) PROHIBITION ON COMMERCE IN SCANNING RE-  
11 CEIVERS.—Section 302(d) of such Act (47 U.S.C.  
12 302a(d)) is amended to read as follows:

13 “(d) EQUIPMENT AUTHORIZATION REGULATIONS.—

14 “(1) PRIVACY PROTECTIONS REQUIRED.—The  
15 Commission shall prescribe regulations, and review  
16 and revise such regulations as necessary in response  
17 to subsequent changes in technology or behavior, de-  
18 nying equipment authorization (under part 15 of  
19 title 47, Code of Federal Regulations, or any other  
20 part of that title) for any scanning receiver that is  
21 capable of—

22 “(A) receiving transmissions in the fre-  
23 quencies that are allocated to the domestic cel-  
24 lular radio telecommunications service or the  
25 personal communications service;

1           “(B) readily being altered to receive trans-  
2           missions in such frequencies;

3           “(C) being equipped with decoders that—

4                   “(i) convert digital domestic cellular  
5                   radio telecommunications service, personal  
6                   communications service, or protected spe-  
7                   cialized mobile radio service transmissions  
8                   to analog voice audio; or

9                   “(ii) convert protected paging service  
10                  transmissions to alphanumeric text; or

11           “(D) being equipped with devices that oth-  
12           erwise decode encrypted radio transmissions for  
13           the purposes of unauthorized interception.

14           “(2) PRIVACY PROTECTIONS FOR SHARED FRE-  
15           QUENCIES.—The Commission shall, with respect to  
16           scanning receivers capable of receiving transmissions  
17           in frequencies that are used by commercial mobile  
18           services and that are shared by public safety users,  
19           examine methods, and may prescribe such regula-  
20           tions as may be necessary, to enhance the privacy of  
21           users of such frequencies.

22           “(3) TAMPERING PREVENTION.—In prescribing  
23           regulations pursuant to paragraph (1), the Commis-  
24           sion shall consider defining ‘capable of readily being  
25           altered’ to require scanning receivers to be manufac-

1       tured in a manner that effectively precludes alter-  
2       ation of equipment features and functions as nec-  
3       essary to prevent commerce in devices that may be  
4       used unlawfully to intercept or divulge radio commu-  
5       nication.

6               “(4) WARNING LABELS.—In prescribing regula-  
7       tions under paragraph (1), the Commission shall  
8       consider requiring labels on scanning receivers warn-  
9       ing of the prohibitions in Federal law on inten-  
10      tionally intercepting or divulging radio communica-  
11      tions.

12              “(5) DEFINITIONS.—As used in this subsection,  
13      the term ‘protected’ means secured by an electronic  
14      method that is not published or disclosed except to  
15      authorized users, as further defined by Commission  
16      regulation.”.

17      (c) IMPLEMENTING REGULATIONS.—Within 90 days  
18      after the date of enactment of this Act, the Federal Com-  
19      munications Commission shall prescribe amendments to  
20      its regulations for the purposes of implementing the  
21      amendments made by this section.

22      **SEC. 6. UNAUTHORIZED INTERCEPTION OR PUBLICATION**  
23                              **OF COMMUNICATIONS.**

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

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

3 (2) in the first sentence of subsection (a), by  
4 striking “Except as authorized by chapter 119, title  
5 18, United States Code, no person” and inserting  
6 “No person”;

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

8 (A) by inserting “intentionally” before  
9 “intercept”; and

10 (B) by striking “communication and di-  
11 vulge” and inserting “communication, and no  
12 person having intercepted such a communica-  
13 tion shall intentionally divulge”;

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

15 (A) by inserting “(A)” after “intercepted,  
16 shall”; and

17 (B) by striking “thereof) or” and inserting  
18 “thereof); or (B)”;

19 (5) by striking the last sentence of subsection  
20 (a) and inserting the following: “Nothing in this  
21 subsection prohibits an interception or disclosure of  
22 a communication as authorized by chapter 119 of  
23 title 18, United States Code.”;

24 (6) in subsection (e)(1)—

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

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

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

9 (8) in subsection (e)(4), by striking “any other  
10 activity prohibited by subsection (a)” and inserting  
11 “any receipt, interception, divulgence, publication, or  
12 utilization of any communication in violation of sub-  
13 section (a)”; and

14 (9) by adding at the end of subsection (e) the  
15 following new paragraph:

16 “(7) Notwithstanding any other investigative or en-  
17 forcement activities of any other Federal agency, the Com-  
18 mission shall investigate alleged violations of this section  
19 and may proceed to initiate action under section 503 of  
20 this Act to impose forfeiture penalties with respect to such  
21 violation upon conclusion of the Commission’s investiga-  
22 tion.”.

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