

103^D CONGRESS
2^D SESSION

S. 2375

To amend title 18, United States Code, to make clear a telecommunications carrier's duty to cooperate in the interception of communications for law enforcement purposes, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 9 (legislative day, AUGUST 8), 1994

Mr. LEAHY introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

AUGUST 25 (legislative day, AUGUST 18), 1994

Reported by Mr. HOLLINGS, without amendment and without recommendation
Ordered referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to make clear a telecommunications carrier's duty to cooperate in the interception of communications for law enforcement purposes, 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,*

1 **SECTION 1. INTERCEPTION OF DIGITAL AND OTHER COM-**
 2 **MUNICATIONS.**

3 (a) IN GENERAL.—Part I of title 18, United States
 4 Code, is amended by inserting after chapter 119 the fol-
 5 lowing new chapter:

6 **“CHAPTER 120—TELECOMMUNICATIONS**
 7 **CARRIER ASSISTANCE TO THE GOV-**
 8 **ERNMENT**

“Sec.

“2601. Definitions.

“2602. Assistance capability requirements.

“2603. Notices of capacity requirements.

“2604. Systems security and integrity.

“2605. Cooperation of equipment manufacturers and providers of telecommuni-
 cations support services.

“2606. Technical requirements and standards; extension of compliance date.

“2607. Enforcement orders.

“2608. Reimbursement of telecommunications carriers.

9 **“§ 2601. Definitions**

10 “(a) DEFINITIONS.—In this chapter—

11 “the terms defined in section 2510 have, re-
 12 spectively, the meanings stated in that section.

13 “‘call-identifying information’—

14 “(A) means all dialing or signalling infor-
 15 mation associated with the origin, direction,
 16 destination, or termination of each communica-
 17 tion generated or received by the subscriber
 18 equipment, facility, or service of a telecommuni-
 19 cations carrier that is the subject of a court
 20 order or lawful authorization; but

1 “(B) does not include any information that
2 may disclose the physical location of the sub-
3 scriber (except to the extent that the location
4 may be determined from the telephone number).

5 “‘Commission’ means the Federal Communica-
6 tions Commission.

7 “‘government’ means the government of the
8 United States and any agency or instrumentality
9 thereof, the District of Columbia, any common-
10 wealth, territory, or possession of the United States,
11 and any State or political subdivision thereof author-
12 ized by law to conduct electronic surveillance.

13 “‘information services’—

14 “(A) means the offering of a capability for
15 generating, acquiring, storing, transforming,
16 processing, retrieving, utilizing, or making
17 available information via telecommunications;
18 and

19 “(B) includes electronic publishing and
20 messaging services; but

21 “(C) does not include any use of any such
22 capability for the management, control, or oper-
23 ation of a telecommunications system or the
24 management of a telecommunications service.

1 “‘provider of telecommunications support serv-
2 ices’ means a person or entity that provides a prod-
3 uct, software, or service to a telecommunications
4 carrier that is integral to such carrier’s switching or
5 transmission of wire or electronic communications.

6 “‘telecommunications carrier’—

7 “(A) means a person or entity engaged in
8 the transmission or switching of wire or elec-
9 tronic communications as a common carrier for
10 hire (within the meaning of section 3(h) of the
11 Communications Act of 1934 (47 U.S.C.
12 153(h))); and

13 “(B) includes—

14 “(i) a person or entity engaged in pro-
15 viding commercial mobile service (as de-
16 fined in section 332(d) of the Communica-
17 tions Act of 1934 (47 U.S.C. 332(d))); and

18 “(ii) a person or entity engaged in
19 providing wire or electronic communication
20 switching or transmission service to the ex-
21 tent that the Commission finds that such
22 service is a replacement for a substantial
23 portion of the local telephone exchange
24 service and that it is in the public interest
25 to deem such a person or entity to be a

1 telecommunications carrier for purposes of
2 this chapter; but

3 “(C) does not include persons or entities
4 insofar as they are engaged in providing infor-
5 mation services.

6 **“§ 2602. Assistance capability requirements**

7 “(a) CAPABILITY REQUIREMENTS.—Except as pro-
8 vided in subsections (b), (c), and (d) of this section, and
9 subject to section 2607(c), a telecommunications carrier
10 shall ensure that its services or facilities that provide a
11 customer or subscriber with the ability to originate, termi-
12 nate, or direct communications are capable of—

13 “(1) expeditiously isolating and enabling the
14 government to intercept, to the exclusion of any
15 other communications, all wire and electronic com-
16 munications carried by the carrier within a service
17 area to or from equipment, facilities, or services of
18 a subscriber of such carrier concurrently with their
19 transmission to or from the subscriber’s service, fa-
20 cility, or equipment or at such later time as may be
21 acceptable to the government;

22 “(2) expeditiously isolating and enabling the
23 government to access call-identifying information
24 that is reasonably available to the carrier—

1 “(A) before, during, or immediately after
2 the transmission of a wire or electronic commu-
3 nication (or at such later time as may be ac-
4 ceptable to the government); and

5 “(B) in a manner that allows it to be asso-
6 ciated with the communication to which it per-
7 tains,

8 except that, with regard to information acquired
9 solely pursuant to the authority for pen registers
10 and trap and trace devices (as defined in section
11 3127), such call-identifying information shall not in-
12 clude any information that may disclose the physical
13 location of the subscriber (except to the extent that
14 the location may be determined from the telephone
15 number);

16 “(3) delivering intercepted communications and
17 call-identifying information to the government in a
18 format such that they may be transmitted by means
19 of facilities or services procured by the government
20 to a location other than the premises of the carrier;
21 and

22 “(4) facilitating authorized communications
23 interceptions and access to call-identifying informa-
24 tion unobtrusively and with a minimum of inter-

1 ference with any subscriber’s telecommunications
2 service and in a manner that protects—

3 “(A) the privacy and security of commu-
4 nications and call-identifying information not
5 authorized to be intercepted; and

6 “(B) information regarding the govern-
7 ment’s interception of communications and ac-
8 cess to call-identifying information.

9 “(b) LIMITATIONS.—

10 “(1) DESIGN OF FEATURES AND SYSTEMS CON-
11 FIGURATIONS.—This chapter does not authorize any
12 law enforcement agency or officer—

13 “(A) to require any specific design of fea-
14 tures or system configurations to be adopted by
15 providers of wire or electronic communication
16 service, manufacturers of telecommunications
17 equipment, or providers of telecommunications
18 support services; or

19 “(B) to prohibit the adoption of any fea-
20 ture or service by providers of wire or electronic
21 communication service, manufacturers of tele-
22 communications equipment, or providers of tele-
23 communications support services.

1 “(2) INFORMATION SERVICES AND INTER-
2 CONNECTION SERVICES AND FACILITIES.—The re-
3 quirements of subsection (a) do not apply to—

4 “(A) information services; or

5 “(B) services or facilities that support the
6 transport or switching of communications for
7 the sole purpose of interconnecting tele-
8 communications carriers or private networks.

9 “(3) ENCRYPTION.—A telecommunications car-
10 rier shall not be responsible for decrypting, or ensur-
11 ing the government’s ability to decrypt, any commu-
12 nication encrypted by a subscriber or customer, un-
13 less the encryption was provided by the carrier and
14 the carrier possesses the information necessary to
15 decrypt the communication.

16 “(c) EMERGENCY OR EXIGENT CIRCUMSTANCES.—In
17 emergency or exigent circumstances (including those de-
18 scribed in sections 2518 (7) or (11)(b) and 3125 of this
19 title and section 1805(e) of title 50), a carrier may fulfill
20 its responsibilities under subsection (a)(3) by allowing
21 monitoring at its premises if that is the only means of
22 accomplishing the interception or access.

23 “(d) MOBILE SERVICE ASSISTANCE REQUIRE-
24 MENTS.—A telecommunications carrier offering a feature
25 or service that allows subscribers to redirect, hand off, or

1 assign their wire or electronic communications to another
2 service area or another service provider or to utilize facili-
3 ties in another service area or of another service provider
4 shall ensure that, when the carrier that had been providing
5 assistance for the interception of wire or electronic com-
6 munications or access to call-identifying information pur-
7 suant to a court order or lawful authorization no longer
8 has access to the content of such communications or call-
9 identifying information within the service area in which
10 interception has been occurring as a result of the subscrib-
11 er's use of such a feature or service, information is avail-
12 able to the government (before, during, or immediately
13 after the transfer of such communications) identifying the
14 provider of wire or electronic communication service that
15 has acquired access to the communications.

16 **“§ 2603. Notices of capacity requirements**

17 “(a) NOTICES OF MAXIMUM AND INITIAL CAPACITY
18 REQUIREMENTS.—

19 “(1) IN GENERAL.—Not later than 1 year after
20 the date of enactment of this chapter, and after con-
21 sulting with State and local law enforcement agen-
22 cies, telecommunications carriers, providers of tele-
23 communications support services, and manufacturers
24 of telecommunications equipment, the Attorney Gen-
25 eral shall publish in the Federal Register and pro-

1 vide to appropriate telecommunications carrier asso-
2 ciations, standard-setting organizations, and fora—

3 “(A) notice of the maximum capacity re-
4 quired to accommodate all of the communica-
5 tion interceptions, pen registers, and trap and
6 trace devices that the Attorney General esti-
7 mates that government agencies authorized to
8 conduct electronic surveillance may conduct and
9 use simultaneously; and

10 “(B) notice of the number of communica-
11 tion interceptions, pen registers, and trap and
12 trace devices, representing a portion of the
13 maximum capacity set forth under subpara-
14 graph (A), that the Attorney General estimates
15 that government agencies authorized to conduct
16 electronic surveillance may conduct and use si-
17 multaneously after the date that is 4 years
18 after the date of enactment of this chapter.

19 “(2) BASIS OF NOTICES.—The notices issued
20 under paragraph (1) may be based upon the type of
21 equipment, type of service, number of subscribers,
22 geographic location, or other measure.

23 “(b) COMPLIANCE WITH CAPACITY NOTICES.—

24 “(1) INITIAL CAPACITY.—Within 3 years after
25 the publication by the Attorney General of a notice

1 of capacity requirements or within 4 years after the
2 date of enactment of this chapter, whichever is
3 longer, a telecommunications carrier shall ensure
4 that its systems are capable of—

5 “(A) expanding to the maximum capacity
6 set forth in the notice under paragraph (1)(A);
7 and

8 “(B) accommodating simultaneously the
9 number of interceptions, pen registers, and trap
10 and trace devices set forth in the notice under
11 paragraph (1)(B).

12 “(2) PERMANENT CAPACITY.—After the date
13 described in paragraph (1), a telecommunications
14 carrier shall ensure that it can accommodate expedi-
15 tiously any increase in the number of communication
16 interceptions, pen registers, and trap and trace de-
17 vices that authorized agencies may seek to conduct
18 and use, up to the maximum capacity requirement
19 set forth in the notice under paragraph (1)(A).

20 “(c) NOTICES OF INCREASED MAXIMUM CAPACITY
21 REQUIREMENTS.—

22 “(1) The Attorney General shall periodically
23 provide to telecommunications carriers written notice
24 of any necessary increases in the maximum capacity

1 requirement set forth in the notice under subsection
2 (b)(1).

3 “(2) Within 3 years after receiving written no-
4 tice of increased capacity requirements under para-
5 graph (1), or within such longer time period as the
6 Attorney General may specify, a telecommunications
7 carrier shall ensure that its systems are capable of
8 expanding to the increased maximum capacity set
9 forth in the notice.

10 **“§ 2604. Systems security and integrity**

11 “A telecommunications carrier shall ensure that any
12 court ordered or lawfully authorized interception of com-
13 munications or access to call-identifying information ef-
14 fected within its switching premises can be activated only
15 with the affirmative intervention of an individual officer
16 or employee of the carrier.

17 **“§ 2605. Cooperation of equipment manufacturers**
18 **and providers of telecommunications**
19 **support services**

20 “(a) CONSULTATION.—A telecommunications carrier
21 shall consult, as necessary, in a timely fashion with manu-
22 facturers of its telecommunications transmission and
23 switching equipment and its providers of telecommuni-
24 cations support services for the purpose of identifying any
25 service or equipment, including hardware and software,

1 that may require modification so as to permit compliance
2 with this chapter.

3 “(b) MODIFICATION OF EQUIPMENT AND SERV-
4 ICES.—Subject to section 2607(c), a manufacturer of tele-
5 communications transmission or switching equipment and
6 a provider of telecommunications support services shall,
7 on a reasonably timely basis and at a reasonable charge,
8 make available to the telecommunications carriers using
9 its equipment or services such modifications as are nec-
10 essary to permit such carriers to comply with this chapter.

11 **“§ 2606. Technical requirements and standards; ex-**
12 **tension of compliance date**

13 “(a) SAFE HARBOR.—

14 “(1) CONSULTATION.—To ensure the efficient
15 and industry-wide implementation of the assistance
16 capability requirements under section 2602, the At-
17 torney General, in coordination with other Federal,
18 State, and local law enforcement agencies, shall con-
19 sult with appropriate associations and standard-set-
20 ting organizations of the telecommunications indus-
21 try.

22 “(2) COMPLIANCE UNDER ACCEPTED STAND-
23 ARDS.—A telecommunications carrier shall be found
24 to be in compliance with the assistance capability re-
25 quirements under section 2602, and a manufacturer

1 of telecommunications transmission or switching
2 equipment or a provider of telecommunications sup-
3 port services shall be found to be in compliance with
4 section 2605, if the carrier, manufacturer, or sup-
5 port service provider is in compliance with publicly
6 available technical requirements or standards are
7 adopted by an industry association or standard-set-
8 ting organization or by the Commission under sub-
9 section (b) to meet the requirements of section 2602.

10 “(3) ABSENCE OF STANDARDS.—The absence
11 of technical requirements or standards for imple-
12 menting the assistance capability requirements of
13 section 2602 shall not—

14 “(A) preclude a carrier, manufacturer, or
15 services provider from deploying a technology or
16 service; or

17 “(B) relieve a carrier, manufacturer, or
18 service provider of the obligations imposed by
19 section 2602 or 2605, as applicable.

20 “(b) FCC AUTHORITY.—

21 “(1) IN GENERAL.—If industry associations or
22 standard-setting organizations fail to issue technical
23 requirements or standards or if a government agen-
24 cy or any other person believes that such require-
25 ments or standards are deficient, the agency or per-

1 son may petition the Commission to establish, by no-
2 tice and comment rulemaking or such other proceed-
3 ings as the Commission may be authorized to con-
4 duct, technical requirements or standards that—

5 “(A) meet the assistance capability re-
6 quirements of section 2602;

7 “(B) protect the privacy and security of
8 communications not authorized to be inter-
9 cepted; and

10 “(C) serve the policy of the United States
11 to encourage the provision of new technologies
12 and services to the public.

13 “(2) TRANSITION PERIOD.—If an industry tech-
14 nical requirement or standard is set aside or sup-
15 planted as a result of Commission action under this
16 section, the Commission, after consultation with the
17 Attorney General, shall establish a reasonable time
18 and conditions for compliance with and the transi-
19 tion to any new standard, including defining the ob-
20 ligations of telecommunications carriers under sec-
21 tion 2602 during any transition period.

22 “(c) EXTENSION OF COMPLIANCE DATE FOR FEA-
23 TURES AND SERVICES.—

24 “(1) PETITION.—A telecommunications carrier
25 proposing to deploy, or having deployed, a feature or

1 service within 4 years after the date of enactment of
2 this chapter may petition the Commission for 1 or
3 more extensions of the deadline for complying with
4 the assistance capability requirements under section
5 2602.

6 “(2) GROUND FOR EXTENSION.—The Commis-
7 sion may, after affording a full opportunity for hear-
8 ing and after consultation with the Attorney Gen-
9 eral, grant an extension under this paragraph, if the
10 Commission determines that compliance with the as-
11 sistance capability requirements under section 2602
12 is not reasonably achievable through application of
13 technology available within the compliance period.

14 “(3) LENGTH OF EXTENSION.—An extension
15 under this paragraph shall extend for no longer than
16 the earlier of—

17 “(A) the date determined by the Commis-
18 sion as necessary for the carrier to comply with
19 the assistance capability requirements under
20 section 2602; or

21 “(B) the date that is 2 years after the date
22 on which the extension is granted.

23 “(4) APPLICABILITY OF EXTENSION.—An ex-
24 tension under this subsection shall apply to only that

1 part of the carrier's business on which the new fea-
2 ture or service is used.

3 **“§ 2607. Enforcement orders**

4 “(a) ENFORCEMENT BY COURT ISSUING SURVEIL-
5 LANCE ORDER.—If a court authorizing an interception
6 under chapter 119, a State statute, or the Foreign Intel-
7 ligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)
8 or authorizing use of a pen register or a trap and trace
9 device under chapter 206 or a State statute finds that a
10 telecommunications carrier has failed to comply with the
11 requirements in this chapter, the court may direct that
12 the carrier comply forthwith and may direct that a pro-
13 vider of support services to the carrier or the manufac-
14 turer of the carrier's transmission or switching equipment
15 furnish forthwith modifications necessary for the carrier
16 to comply.

17 “(b) ENFORCEMENT UPON APPLICATION BY ATTOR-
18 NEY GENERAL.—The Attorney General may apply to the
19 appropriate United States district court for, and the Unit-
20 ed States district courts shall have jurisdiction to issue,
21 an order directing that a telecommunications carrier, a
22 manufacturer of telecommunications transmission or
23 switching equipment, or a provider of telecommunications
24 support services comply with this chapter.

1 “(c) GROUNDS FOR ISSUANCE.—A court shall issue
2 an order under subsection (a) or (b) only if the court finds
3 that—

4 “(1) alternative technologies or capabilities or
5 the facilities of another carrier are not reasonably
6 available to law enforcement for implementing the
7 interception of communications or access to call-
8 identifying information; and

9 “(2) compliance with the requirements of this
10 chapter is reasonably achievable through the applica-
11 tion of available technology to the feature or service
12 at issue or would have been reasonably achievable if
13 timely action had been taken.

14 “(d) TIME FOR COMPLIANCE.—Upon issuance of an
15 enforcement order under this section, the court shall speci-
16 fy a reasonable time and conditions for complying with
17 its order, considering the good faith efforts to comply in
18 a timely manner, any effect on the carrier’s, manufactur-
19 er’s, or service provider’s ability to continue to do busi-
20 ness, the degree of culpability or delay in undertaking ef-
21 forts to comply, and such other matters as justice may
22 require.

23 “(e) LIMITATION.—An order under this section may
24 not require a telecommunications carrier to meet the gov-
25 ernment’s demand for interception of communications and

1 acquisition of call-identifying information to any extent in
2 excess of the capacity for which notice has been provided
3 under section 2603.

4 “(f) CIVIL PENALTY.—

5 “(1) IN GENERAL.—A court issuing an order
6 under this section against a telecommunications car-
7 rier, a manufacturer of telecommunications trans-
8 mission or switching equipment, or a provider of
9 telecommunications support services may impose a
10 civil penalty of up to \$10,000 per day for each day
11 in violation after the issuance of the order or after
12 such future date as the court may specify.

13 “(2) CONSIDERATIONS.—In determining wheth-
14 er to impose a fine and in determining its amount,
15 the court shall take into account—

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

18 “(B) the violator’s ability to pay, the viola-
19 tor’s good faith efforts to comply in a timely
20 manner, any effect on the violator’s ability to
21 continue to do business, the degree of culpabil-
22 ity, and the length of any delay in undertaking
23 efforts to comply; and

24 “(C) such other matters as justice may re-
25 quire.

1 lish any procedures and regulations deemed necessary to
 2 effectuate timely and cost-efficient reimbursement to tele-
 3 communications carriers for reimbursable costs incurred
 4 under this chapter, under chapters 119 and 121, and
 5 under the Foreign Intelligence Surveillance Act of 1978
 6 (50 U.S.C. 1801 et seq.).

7 “(c) DISPUTE RESOLUTION.—If there is a dispute
 8 between the Attorney General and a telecommunications
 9 carrier regarding the amount of reasonable costs to be re-
 10 imburged under subsection (b), the dispute shall be re-
 11 solved and the amount determined in a proceeding initi-
 12 ated at the Commission under section 2606(b) or by the
 13 court from which an enforcement order is sought under
 14 section 2607.

15 “(d) LACK OF APPROPRIATED FUNDS.—The lack of
 16 appropriated funds sufficient to reimburse telecommuni-
 17 cations carriers for modifications under subsection (a)
 18 shall be considered by the Commission or a court in deter-
 19 mining whether compliance is reasonable under section
 20 2607(c).”.

21 (b) TECHNICAL AMENDMENT.—The part analysis for
 22 part I of title 18, United States Code, is amended by in-
 23 serting after the item relating to chapter 119 the following
 24 new item:

**“120. Telecommunications carrier assistance to the Gov-
 ernment 2601”.**

1 **SEC. 2. AUTHORIZATION OF APPROPRIATIONS.**

2 There are authorized to be appropriated to carry out
3 section 2608 of title 18, United States Code, as added by
4 section 1—

5 (1) a total of \$500,000,000 for fiscal years
6 1995, 1996, 1997, and 1998; and

7 (2) such sums as are necessary for each fiscal
8 year thereafter.

9 **SEC. 3. EFFECTIVE DATE.**

10 (a) IN GENERAL.—Except as provided in paragraph
11 (2), chapter 120 of title 18, United States Code, as added
12 by section 1, shall take effect on the date of enactment
13 of this Act.

14 (b) ASSISTANCE CAPABILITY AND SYSTEMS SECU-
15 RITY AND INTEGRITY REQUIREMENTS.—Sections 2602
16 and 2604 of title 18, United States Code, as added by
17 section 1, shall take effect on the date that is 4 years after
18 the date of enactment of this Act.

19 **SEC. 4. REPORTS.**

20 (a) REPORTS BY THE ATTORNEY GENERAL.—

21 (1) IN GENERAL.—On or before November 30,
22 1995, and on or before November 30 of each year
23 for 5 years thereafter, the Attorney General shall
24 submit to the Congress a report on the amounts
25 paid during the preceding fiscal year in reimburse-
26 ment to telecommunications carriers under section

1 2608 of title 18, United States Code, as added by
2 section 1.

3 (2) CONTENTS.—A report under paragraph (1)
4 shall include—

5 (A) a detailed accounting of the amounts
6 paid to each carrier and the technology, feature
7 or service for which the amounts were paid; and

8 (B) projections of the amounts expected to
9 be paid in the current fiscal year, the carriers
10 to which reimbursement is expected to be paid,
11 and the technologies, services, or features for
12 which reimbursement is expected to be paid.

13 (b) REPORTS BY THE COMPTROLLER GENERAL.—

14 (1) IN GENERAL.—On or before April 1, 1996,
15 and April 1, 1998, the Comptroller General of the
16 United States, after consultation with the Attorney
17 General and the telecommunications industry, shall
18 submit to the Congress a report reflecting its audit
19 of the sums paid by the Attorney General to carriers
20 in reimbursement.

21 (2) CONTENTS.—A report under paragraph (1)
22 shall include the findings and conclusions of the
23 Comptroller General on the costs to be incurred
24 after the compliance date, including projections of
25 the amounts expected to be incurred and the tech-

1 nologies, services, or features for which expenses are
2 expected to be incurred.

3 **SEC. 5. CORDLESS TELEPHONES.**

4 (a) DEFINITIONS.—Section 2510 of title 18, United
5 States Code, is amended—

6 (1) in paragraph (1) by striking “but such term
7 does not include” and all that follows through “base
8 unit”; and

9 (2) in paragraph (12) by striking subparagraph
10 (A) and redesignating subparagraphs (B), (C), and
11 (D) as subparagraphs (A), (B), and (C), respec-
12 tively.

13 (b) PENALTY.—Section 2511 of title 18, United
14 States Code, is amended—

15 (1) in subsection (4)(b)(i) by inserting “a
16 cordless telephone communication that is transmit-
17 ted between the cordless telephone handset and the
18 base unit,” after “cellular telephone communica-
19 tion,”; and

20 (2) in subsection (4)(b)(ii) by inserting “a
21 cordless telephone communication that is transmit-
22 ted between the cordless telephone handset and the
23 base unit,” after “cellular telephone communica-
24 tion,”.

1 **SEC. 6. RADIO-BASED DATA COMMUNICATIONS.**

2 Section 2510(16) of title 18, United States Code, is
3 amended—

4 (1) by striking “or” at the end of subparagraph
5 (D);

6 (2) by inserting “or” at the end of subpara-
7 graph (E); and

8 (3) by inserting after subparagraph (E) the fol-
9 lowing new subparagraph:

10 “(F) an electronic communication;”

11 **SEC. 7. PENALTIES FOR MONITORING RADIO COMMUNICA-**
12 **TIONS THAT ARE TRANSMITTED USING MOD-**
13 **ULATION TECHNIQUES WITH NONPUBLIC PA-**
14 **RAMETERS.**

15 Section 2511(4)(b) of title 18, United States Code,
16 is amended by striking “or encrypted, then” and inserting
17 “, encrypted, or transmitted using modulation techniques
18 the essential parameters of which have been withheld from
19 the public with the intention of preserving the privacy of
20 such communication”.

21 **SEC. 8. TECHNICAL CORRECTION.**

22 Section 2511(2)(a)(i) of title 18, United States Code,
23 is amended by striking “used in the transmission of a wire
24 communication” and inserting “used in the transmission
25 of a wire or electronic communication”.

1 **SEC. 9. FRAUDULENT ALTERATION OF COMMERCIAL MO-**
2 **BILE RADIO INSTRUMENTS.**

3 (a) OFFENSE.—Section 1029(a) of title 18, United
4 States Code, is amended—

5 (1) by striking “or” at the end of paragraph
6 (3); and

7 (2) by inserting after paragraph (4) the follow-
8 ing new paragraphs:

9 “(5) knowingly and with intent to defraud uses,
10 produces, traffics in, has control or custody of, or
11 possesses a telecommunications instrument that has
12 been modified or altered to obtain unauthorized use
13 of telecommunications services; or

14 “(6) knowingly and with intent to defraud uses,
15 produces, traffics in, has control or custody of, or
16 possesses—

17 “(A) a scanning receiver; or

18 “(B) hardware or software used for alter-
19 ing or modifying telecommunications instru-
20 ments to obtain unauthorized access to tele-
21 communications services.”.

22 (b) PENALTY.—Section 1029(c)(2) of title 18, United
23 States Code, is amended by striking “(a)(1) or (a)(4)” and
24 inserting “(a) (1), (4), (5), or (6)”.

25 (c) DEFINITIONS.—Section 1029(e) of title 18, Unit-
26 ed States Code, is amended—

1 (1) in paragraph (1) by inserting “electronic se-
2 rial number, mobile identification number, personal
3 identification number, or other telecommunications
4 service, equipment, or instrument identifier,” after
5 “account number,”;

6 (2) by striking “and” at the end of paragraph
7 (5);

8 (3) by striking the period at the end of para-
9 graph (6) and inserting “; and”; and

10 (4) by adding at the end the following new
11 paragraph:

12 “(7) the term ‘scanning receiver’ means a de-
13 vice or apparatus that can be used to intercept a
14 wire or electronic communication in violation of
15 chapter 119.”.

16 **SEC. 10. TRANSACTIONAL DATA.**

17 (a) DISCLOSURE OF RECORDS.—Section 2703 of title
18 18, United States Code, is amended—

19 (1) in subsection (c)—

20 (A) in subparagraph (B)—

21 (i) by striking clause (i); and

22 (ii) by redesignating clauses (ii), (iii),

23 (iv) as clauses (i), (ii), and (iii), respec-

24 tively; and

1 (B) by adding at the end the following new
2 subparagraph:

3 “(C) A provider of electronic communica-
4 tion service or remote computing service shall
5 disclose to a governmental entity the name, bill-
6 ing address, and length of service of a sub-
7 scriber to or customer of such service and the
8 types of services the subscriber or customer uti-
9 lized, when the governmental entity uses an ad-
10 ministrative subpoena authorized by a Federal
11 or State statute or a Federal or State grand
12 jury or trial subpoena or any means available
13 under subparagraph (B).”; and

14 (2) by amending the first sentence of subsection
15 (d) to read as follows: “A court order for disclosure
16 under subsection (b) or (c) may be issued by any
17 court that is a court of competent jurisdiction de-
18 scribed in section 3126(2)(A) and shall issue only if
19 the governmental entity offers specific and
20 articulable facts showing that there are reasonable
21 grounds to believe that the contents of a wire or
22 electronic communication, or the records or other in-
23 formation sought, are relevant and material to an
24 ongoing criminal investigation.”.

1 (b) PEN REGISTERS AND TRAP AND TRACE DE-
2 VICES.—Section 3121 of title 18, United States Code, is
3 amended—

4 (1) by redesignating subsection (c) as sub-
5 section (d); and

6 (2) by inserting after subsection (b) the follow-
7 ing new subsection:

8 “(c) LIMITATION.—A government agency authorized
9 to install and use a pen register under this chapter or
10 under State law, shall use technology reasonably available
11 to it that restricts the recording or decoding of electronic
12 or other impulses to the dialing and signalling information
13 utilized in call processing.”.

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