

WIRELESS TELECOMMUNICATIONS PRIVACY ACT OF 2000

—————
 JULY 11, 2000.—Ordered to be printed
 —————

Mr. HYDE, from the Committee on the Judiciary,
 submitted the following

R E P O R T

[To accompany H.R. 3489]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3489) amending 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, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

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

SEC. 2. GAO DETERMINATION OF FCC REGULATORY FEES.

Within 180 days after the date of the enactment of this Act, the Comptroller General of the United States shall conduct a review of the annual regulatory fees collected by the Federal Communications Commission pursuant to section 9 of the Communications Act of 1934 (47 U.S.C. 159) to determine whether such fees have been accurately assessed since their inception and shall submit a report to the Congress regarding such review and determination.

SEC. 3. COMMERCE IN ELECTRONIC EAVESDROPPING DEVICES.

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

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

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

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

“(A) receiving transmissions in the frequencies that are allocated to the domestic cellular radio telecommunications service or the personal communications service;

“(B) readily being altered to receive transmissions in such frequencies;

“(C) being equipped with decoders that—

“(i) convert digital domestic cellular radio telecommunications service, personal communications service, or protected specialized mobile radio service transmissions to analog voice audio; or

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

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

“(2) **PRIVACY PROTECTIONS FOR SHARED FREQUENCIES.**—The Commission shall, with respect to scanning receivers capable of receiving transmissions in frequencies that are used by commercial mobile services and that are shared by public safety users, examine methods, and may prescribe such regulations as may be necessary, to enhance the privacy of users of such frequencies.

“(3) **TAMPERING PREVENTION.**—In prescribing regulations pursuant to paragraph (1), the Commission shall consider defining ‘capable of readily being altered’ to require scanning receivers to be manufactured in a manner that effectively precludes alteration of equipment features and functions as necessary to prevent commerce in devices that may be used unlawfully to intercept or divulge radio communication.

“(4) **WARNING LABELS.**—In prescribing regulations under paragraph (1), the Commission shall consider requiring labels on scanning receivers warning of the prohibitions in Federal law on intentionally intercepting or divulging radio communications.

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

(c) **IMPLEMENTING REGULATIONS.**—Within 90 days after the date of enactment of this Act, the Federal Communications Commission shall prescribe amendments to its regulations for the purposes of implementing the amendments made by this section.

SEC. 4. UNAUTHORIZED INTERCEPTION OR PUBLICATION OF COMMUNICATIONS.

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

(1) in the heading of such section, by inserting “interception or” after “unauthorized”;

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

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

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

(B) by striking “communication and divulge” and inserting “communication, and no person having intercepted such a communication shall intentionally divulge”;

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

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

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

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

(6) in subsection (e)(1)—

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

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

(7) in subsection (e)(3), by striking “any violation” and inserting “any receipt, interception, divulgence, publication, or utilization of any communication in violation”;

(8) in subsection (e)(4), by striking “any other activity prohibited by subsection (a)” and inserting “any receipt, interception, divulgence, publication, or utilization of any communication in violation of subsection (a)”; and

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

“(7) Notwithstanding any other investigative or enforcement activities of any other Federal agency, the Commission shall investigate alleged violations of this section and may proceed to initiate action under section 503 of this Act to impose forfeiture penalties with respect to such violation upon conclusion 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.

PURPOSE AND SUMMARY

The provisions of H.R. 3489 contained in the bill as introduced provided a uniform method for fairly and simply determining how State and local jurisdictions may tax wireless telecommunications. Among its goals are to provide customers with simpler billing statements, reduce the chances of double taxation of wireless telecommunications services, and simplify and reduce the costs of tax administration for carriers and State and local governments.

The Committee on the Judiciary struck all provisions of H.R. 3489 relating to these State tax issues, because it had previously addressed those identical issues in H.R. 4391. The bill as reported by the Committee on the Judiciary contains no provisions within the subject matter jurisdiction of the Committee on the Judiciary.

BACKGROUND AND NEED FOR THE LEGISLATION

For a discussion of the background and need for legislation addressing the State tax issues relating to wireless telecommunication services, see the Report of the Committee on the Judiciary to H.R. 4391, the “Mobile Telecommunications Sourcing Act.”

HEARINGS

The committee’s Subcommittee on Commercial and Administrative Law held a hearing on H.R. 3489 on May 4, 2000. Testimony was received from Congressman Chip Pickering, principal sponsor of the bill; Ray Scheppach, on behalf of the National Governors’ As-

sociation; Thomas Wheeler, President and CEO of the Cellular Telecommunications Industry Association; Harley Duncan, on behalf of the Federation of Tax Administrators; and Joseph Brooks, representing the National League of Cities.

COMMITTEE CONSIDERATION

On May 24, 2000, the committee met in open session and ordered favorably reported the bill H.R. 3489 with an amendment by voice vote, a quorum being present.

VOTE OF THE COMMITTEE

There were no recorded votes during the consideration of H.R. 3489 by the committee.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the committee reports that the findings and recommendations of the committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM FINDINGS

No findings or recommendations of the Committee on Government Reform were received as referred to in clause 3(c)(4) of rule XIII of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House Rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the committee sets forth, with respect to the bill, H.R. 3489, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 2, 2000.

Hon. HENRY J. HYDE, *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3489, the Wireless Telecommunications Privacy Act of 2000.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Hadley (for federal costs), who can be reached at 226-2860, Hester Grippando (for revenues), who can be reached at 226-2720, Shelley Finlayson (for the state and local impact), who can be reached at 225-3220, and

Jean Wooster (for the private-sector impact), who can be reached at 226–2940.

Sincerely,

DAN L. CRIPPEN, *Director*.

cc: Honorable John Conyers Jr.
Ranking Democratic Member

H.R. 3489—Wireless Telecommunications Privacy Act of 2000.

SUMMARY

CBO estimates that enactment of H.R. 3489 would have a negligible effect on the federal budget.

H.R. 3489 would amend the Communications Act of 1934 to prohibit modifying any equipment used to communicate electronically in any manner that would not comply with regulations affecting electronic eavesdropping. In addition, the bill would require the General Accounting Office to issue a report on whether the Federal Communications Commission (FCC) has accurately assessed regulatory fees.

The bill would impose criminal penalties for intercepting, publishing, or divulging a communication that is not authorized. Because H.R. 3489 could affect direct spending and receipts; therefore, pay-as-you-go procedures would apply, but CBO estimates that any such effects would be negligible. CBO estimates that net discretionary costs to the FCC to implement the provisions of this bill also would be negligible.

H.R. 3489 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

The bill would impose a new private-sector mandate, as defined in UMRA, on manufacturers, importers, sellers, and those who modify scanning receivers. The direct cost of the mandate would be well below the annual threshold established in UMRA for private-sector mandates (\$109 million in 2000, adjusted for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

H.R. 3489 would amend the Communications Act of 1934 to prohibit modifying any equipment used to communicate electronically in any manner that would not comply with regulations affecting electronic eavesdropping. The bill would direct the FCC to prepare regulations to deny the authorization to use FCC equipment for certain scanning receivers that may be capable of unauthorized interception of communication transmissions. Based on information from the FCC, CBO estimates that these regulations would cost less than \$500,000 to promulgate, assuming availability of appropriated funds.

The bill also would amend the Communications Act of 1934 to impose criminal penalties for intercepting, publishing, or divulging a communication that is not authorized; consequently, the federal government might collect additional penalties if H.R. 3489 is enacted. Collections of penalties are recorded in the budget as governmental receipts (revenues), which are deposited in the Crime Victims Fund and spent in subsequent years. CBO estimates that any additional receipts and direct spending that would occur under this bill would be negligible. Under current law, any enforcement costs

that the agency incurs are offset by fees charged to the industries that the FCC regulates. As a result, we estimate that this provision would not result in any significant net cost to the federal government.

CBO estimates that the other provisions of the bill would have no significant budgetary impact. The costs of this legislation would fall within budget function 370 (commerce and housing credit).

PAY-AS-YOU-GO CONSIDERATIONS

The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. As noted above, H.R. 3489 could affect direct spending and receipts, but CBO estimates that any such effects would be negligible.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

H.R. 3489 contains no intergovernmental mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

H.R. 3489 would impose a new private-sector mandate, as defined by UMRA, on manufacturers, importers, sellers, and those who modify scanning receivers. The bill would expand the FCC's criteria for certifying equipment before it can be imported or marketed. Based on information provided by the leading manufacturer of scanning receivers and the FCC, CBO estimates that the direct cost of complying with H.R. 3489 would fall well below the statutory threshold for private-sector mandates (\$109 million in 2000, adjusted annually for inflation).

PREVIOUS CBO ESTIMATES

On May 22, 2000, CBO transmitted a cost estimate of H.R. 3489, as ordered reported by the House Committee on Commerce on May 17, 2000. On February 22, 1999, CBO transmitted a cost estimate of H.R. 514, the Wireless Privacy Enhancement Act of 1999, as ordered reported by the House Committee on Commerce on February 11, 1999. The Judiciary Committee's version of H.R. 3489 is nearly identical to H.R. 514 and to the provisions of the Commerce Committee's version of H.R. 3489 that concern electronic eavesdropping, and our cost estimates are the same for these provisions. The Commerce Committee's version of H.R. 3489 also contained provisions that concern state taxation of mobile telephone services.

ESTIMATE PREPARED BY:

Federal Costs: Mark Hadley (226-2860)
 Revenues: Hester Grippando (226-2720)
 Impact on State, Local, and Tribal Governments: Shelley Finlayson
 (225-3220)
 Impact on the Private Sector: Jean Wooster (226-2940)

ESTIMATE APPROVED BY:

Peter H. Fontaine
 Deputy Assistant Director for Budget Analysis

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the committee finds the authority for this legislation in Article I, clause 8, section 3 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

H.R. 3489, as reported by the Committee on the Judiciary, contains no sections within the committee's jurisdiction.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934

* * * * *

TITLE III—PROVISIONS RELATING TO
RADIO

PART I—GENERAL PROVISIONS

* * * * *

SEC. 302. DEVICES WHICH INTERFERE WITH RADIO RECEPTION.

(a) * * *

(b) No person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section, *or modify any such device, equipment, or system in any manner that causes such device, equipment, or system to fail to comply with such regulations.*

* * * * *

[(d)(1) Within 180 days after the date of enactment of this subsection, the Commission shall prescribe and make effective regulations denying equipment authorization (under part 15 of title 47, Code of Federal Regulations, or any other part of that title) for any scanning receiver that is capable of—

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

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

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

[(2) Beginning 1 year after the effective date of the regulations adopted pursuant to paragraph (1), no receiver having the capabilities described in subparagraph (A), (B), or (C) of paragraph (1), as such capabilities are defined in such regulations, shall be manufac-

tured in the United States or imported for use in the United States.]

(d) EQUIPMENT AUTHORIZATION REGULATIONS.—

(1) PRIVACY PROTECTIONS REQUIRED.—The Commission shall prescribe regulations, and review and revise such regulations as necessary in response to subsequent changes in technology or behavior, denying equipment authorization (under part 15 of title 47, Code of Federal Regulations, or any other part of that title) for any scanning receiver that is capable of—

(A) receiving transmissions in the frequencies that are allocated to the domestic cellular radio telecommunications service or the personal communications service;

(B) readily being altered to receive transmissions in such frequencies;

(C) being equipped with decoders that—

(i) convert digital domestic cellular radio telecommunications service, personal communications service, or protected specialized mobile radio service transmissions to analog voice audio; or

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

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

(2) PRIVACY PROTECTIONS FOR SHARED FREQUENCIES.—The Commission shall, with respect to scanning receivers capable of receiving transmissions in frequencies that are used by commercial mobile services and that are shared by public safety users, examine methods, and may prescribe such regulations as may be necessary, to enhance the privacy of users of such frequencies.

(3) TAMPERING PREVENTION.—In prescribing regulations pursuant to paragraph (1), the Commission shall consider defining “capable of readily being altered” to require scanning receivers to be manufactured in a manner that effectively precludes alteration of equipment features and functions as necessary to prevent commerce in devices that may be used unlawfully to intercept or divulge radio communication.

(4) WARNING LABELS.—In prescribing regulations under paragraph (1), the Commission shall consider requiring labels on scanning receivers warning of the prohibitions in Federal law on intentionally intercepting or divulging radio communications.

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

* * * * *

TITLE VII—MISCELLANEOUS PROVISIONS

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SEC. 705. UNAUTHORIZED INTERCEPTION OR PUBLICATION OF COMMUNICATIONS.

(a) [Except as authorized by chapter 119, title 18, United States Code, no person] *No person* receiving, assisting in receiving, transmitting, or assisting in transmitting, any interstate or foreign communication by wire or radio shall divulge or publish the existence, contents, substance, purport, effect, or meaning thereof, except through authorized channels of transmission or reception, (1) to any person other than the addressee, his agent, or attorney, (2) to a person employed or authorized to forward such communication to its destination, (3) to proper accounting or distributing officers of the various communicating centers over which the communication may be passed, (4) to the master of a ship under whom he is serving, (5) in response to a subpoena issued by a court of competent jurisdiction, or (6) on demand of other lawful authority. No person not being authorized by the sender shall *intentionally* intercept any radio [communication and divulge] *communication, and no person having intercepted such a communication shall intentionally divulge* or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication to any person. No person not being entitled thereto shall receive or assist in receiving any interstate or foreign communication by radio and use such communication (or any information therein contained) for his own benefit or for the benefit of another not entitled thereto. No person having received any intercepted radio communication or having become acquainted with the contents, substance, purport, effect, or meaning of such communication (or any part thereof) knowing that such communication was intercepted, shall (A) divulge or publish the existence, contents, substance, purport, effect, or meaning of such communication (or any part [thereof] or] *thereof*); or (B) use such communication (or any information therein contained) for his own benefit or for the benefit of another not entitled thereto. [This section shall not apply to the receiving, divulging, publishing, or utilizing the contents of any radio communication which is transmitted by any station for the use of the general public, which relates to ships, aircraft, vehicles, or persons in distress, or which is transmitted by an amateur radio station operator or by a citizens band radio operator.] *Nothing in this subsection prohibits an interception or disclosure of a communication as authorized by chapter 119 of title 18, United States Code.*

* * * * *

(e)(1) Any person who willfully violates subsection (a) shall be [fined not more than \$2,000 or] imprisoned for not more than 6 months, or *fined under title 18, United States Code*, or both.

* * * * *

(3)(A) Any person aggrieved by [any violation] *any receipt, interception, divulgence, publication, or utilization of any communication in violation* of subsection (a) or paragraph (4) of this subsection may bring a civil action in a United States district court or in any other court of competent jurisdiction.

* * * * *

(4) Any person who manufactures, assembles, modifies, imports, exports, sells, or distributes any electronic, mechanical, or other device or equipment, knowing or having reason to know that

the device or equipment is primarily of assistance in the unauthorized decryption of satellite cable programming, or direct-to-home satellite services, or is intended for **any other activity prohibited by subsection (a)** *any receipt, interception, divulgence, publication, or utilization of any communication in violation of subsection (a)*, shall be fined not more than \$500,000 for each violation, or imprisoned for not more than 5 years for each violation, or both. For purposes of all penalties and remedies established for violations of this paragraph, the prohibited activity established herein as it applies to each such device shall be deemed a separate violation.

* * * * *

(7) Notwithstanding any other investigative or enforcement activities of any other Federal agency, the Commission shall investigate alleged violations of this section and may proceed to initiate action under section 503 of this Act to impose forfeiture penalties with respect to such violation upon conclusion of the Commission's investigation.

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