

Calendar No. 810

108TH CONGRESS
2D SESSION

S. 1963

To amend the Communications Act of 1934 to protect the privacy rights of subscribers to wireless communications services.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 25, 2003

Mr. SPECTER (for himself, Mrs. BOXER, Mr. SCHUMER, Mr. KENNEDY, Mr. NELSON of Florida, Mr. ENZI, Mr. LAUTENBERG, Mr. DAYTON, and Mr. LEAHY) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

NOVEMBER 19, 2004

Reported by Mr. MCCAIN, with an amendment

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

A BILL

To amend the Communications Act of 1934 to protect the privacy rights of subscribers to wireless communications services.

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 411 Privacy
5 Act”.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) there are roughly 150 million wireless sub-
4 scribers in the United States, up from approximately
5 15 million subscribers just a decade ago;

6 (2) wireless phone service has proven valuable
7 to millions of Americans because of its mobility, and
8 the fact that government policies have expanded op-
9 portunities for new carriers to enter the market, of-
10 fering more choices and ever lower prices for con-
11 sumers;

12 (3) in addition to the benefits of competition
13 and mobility, subscribers also benefit from the fact
14 that wireless phone numbers have not been publicly
15 available;

16 (4) up until now, the privacy of wireless sub-
17 scribers has been safeguarded and thus vastly dimin-
18 ished the likelihood of subscribers receiving un-
19 wanted or annoying phone call interruptions on their
20 wireless phones;

21 (5) moreover, because their wireless contact in-
22 formation, such as their phone number, have never
23 been publicly available in any published directory or
24 from any directory assistance service, subscribers
25 have come to expect that if their phone rings it's

1 likely to be a call from someone to whom they have
2 personally given their number;

3 (6) the wireless industry is poised to begin im-
4 plementing a directory assistance service so that
5 callers can reach wireless subscribers, including sub-
6 scribers who have not given such callers their wire-
7 less phone number;

8 (7) while some wireless subscribers may find
9 such directory assistance service useful, current sub-
10 scribers deserve the right to choose whether they
11 want to participate in such a directory;

12 (8) because wireless users are typically charged
13 for incoming calls, consumers must be afforded the
14 ability to maintain the maximum amount of control
15 over how many calls they may expect to receive and,
16 in particular, control over the disclosure of their
17 wireless phone number;

18 (9) current wireless subscribers who elect to
19 participate, or new wireless subscribers who decline
20 to be listed, in any new wireless directory assistance
21 service directory, including those subscribers who
22 also elect not to receive forwarded calls from any
23 wireless directory assistance service, should not be
24 charged for exercising such rights;

1 (10) the marketplace has not yet adequately ex-
2 plained an effective plan to protect consumer privacy
3 rights;

4 (11) Congress previously acted to protect the
5 wireless location information of subscribers by enact-
6 ing prohibitions on the disclosure of such sensitive
7 information without the express prior authorization
8 of the subscriber; and

9 (12) the public interest would be served by
10 similarly enacting effective and industry-wide privacy
11 protections for consumers with respect to wireless
12 directory assistance service.

13 **SEC. 3. CONSUMER CONTROL OF WIRELESS PHONE NUM-**
14 **BERS.**

15 Section 332(c) of the Communications Act of 1934
16 (47 U.S.C. 332(c)) is amended by adding at the end the
17 following:

18 “(9) WIRELESS CONSUMER PRIVACY PROTEC-
19 TION.—

20 “(A) CURRENT SUBSCRIBERS.—A provider
21 of commercial mobile services, or any direct or
22 indirect affiliate or agent of such a provider,
23 may not include the wireless telephone number
24 information of any current subscriber in any

1 wireless directory assistance service database
2 unless—

3 “(i) the mobile service provider pro-
4 vides a conspicuous, separate notice to the
5 subscriber informing the subscriber of the
6 right not to be listed in any wireless direc-
7 tory assistance service; and

8 “(ii) the mobile service provider ob-
9 tains express prior authorization for listing
10 from such subscriber, separate from any
11 authorization obtained to provide such sub-
12 scriber with commercial mobile service; or
13 any calling plan or service associated with
14 such commercial mobile service; and such
15 authorization has not been subsequently
16 withdrawn.

17 “(B) NEW SUBSCRIBERS.—A provider of
18 commercial mobile services; or any direct or in-
19 direct affiliate or agent of such a provider; may
20 include the wireless telephone number informa-
21 tion of any new subscriber in a wireless direc-
22 tory assistance service database only if the com-
23 mercial mobile service provider—

24 “(i) provides a conspicuous, separate
25 notice to the subscriber, at the time of en-

1 tering into an agreement to provide com-
2 mercial mobile service, and at least once
3 each year thereafter, informing the sub-
4 scriber of the right not to be listed in any
5 wireless directory assistance service data-
6 base; and

7 “(ii) provides the subscriber with con-
8 venient mechanisms by which the sub-
9 scriber may decline or refuse to participate
10 in such database, including mechanisms at
11 the time of entering into an agreement to
12 provide commercial mobile service, in the
13 billing of such service, and when receiving
14 any connected call from a wireless direc-
15 tory assistance service.

16 “(C) CALL FORWARDING.—A provider of
17 commercial mobile services, or any direct or in-
18 direct affiliate or agent of such provider, may
19 connect a calling party from a wireless directory
20 assistance service to a commercial mobile serv-
21 ice subscriber only if—

22 “(i) such subscriber is provided prior
23 notice of the calling party’s identity and is
24 permitted to accept or reject the incoming
25 call on a per-call basis;

1 “(ii) such subscriber’s wireless tele-
2 phone number information is not disclosed
3 to the calling party; and

4 “(iii) such subscriber is not an un-
5 listed commercial mobile service subscriber.

6 “(D) PUBLICATION OF DIRECTORIES PRO-
7 HIBITED.—A provider of commercial mobile
8 services, or any direct or indirect affiliate or
9 agent of such a provider, may not publish, in
10 printed, electronic, or other form, the contents
11 of any wireless directory assistance service
12 database, or any portion or segment thereof.

13 “(E) NO CONSUMER FEE FOR RETAINING
14 PRIVACY.—A provider of commercial mobile
15 services may not charge any subscriber for exer-
16 cising any of the rights under this paragraph.

17 “(F) DEFINITIONS.—For purposes of this
18 paragraph—

19 “(i) the term ‘current subscriber’
20 means any subscriber to commercial mobile
21 service as of the date when a wireless di-
22 rectory assistance service is implemented
23 by a provider of commercial mobile service;

24 “(ii) the term ‘new subscriber’ means
25 any subscriber to commercial mobile serv-

1 ice who becomes a subscriber after the
2 date when a wireless directory assistance
3 service is implemented by a provider of
4 commercial mobile service; and includes
5 any subscriber of a different provider of
6 commercial mobile service who subse-
7 quently switches to a new provider of com-
8 mercial mobile service;

9 “(iii) the term ‘wireless telephone
10 number information’ means the telephone
11 number, electronic address, and any other
12 identifying information by which a calling
13 party may reach a subscriber to commer-
14 cial mobile services, and which is assigned
15 by a commercial mobile service provider to
16 such subscriber, and includes such sub-
17 scriber’s name and address;

18 “(iv) the term ‘wireless directory as-
19 sistance service’ means any service for con-
20 necting calling parties to a subscriber of
21 commercial mobile service when such call-
22 ing parties themselves do not possess such
23 subscriber’s wireless telephone number in-
24 formation; and

1 “(v) the term ‘calling party’s identity’
 2 means the telephone number of the calling
 3 party or the name of subscriber to such
 4 telephone; or an oral or text message which
 5 provides sufficient information to enable a
 6 commercial mobile services subscriber to
 7 determine who is calling;

8 “(vi) the term ‘unlisted commercial
 9 mobile services subscriber’ means—

10 “(I) a current subscriber to com-
 11 mercial mobile services who has not
 12 provided express prior consent to a
 13 commercial mobile service provider to
 14 be included in a wireless directory as-
 15 sistance service database; and

16 “(II) a new subscriber to com-
 17 mercial mobile service who has exer-
 18 cised the right contained in subpara-
 19 graph (B)(ii) to decline or refuse to
 20 such inclusion.”.

21 **SECTION 1. SHORT TITLE.**

22 *This Act may be cited as the “Wireless 411 Privacy*
 23 *Act”.*

24 **SEC. 2. FINDINGS.**

25 *Congress finds that—*

1 (1) *there are roughly 150 million wireless sub-*
2 *scribers in the United States, up from approximately*
3 *15 million subscribers just a decade ago;*

4 (2) *wireless phone service has proven valuable to*
5 *millions of Americans because of its mobility, and the*
6 *fact that government policies have expanded opportu-*
7 *nities for new carriers to enter the market, offering*
8 *more choices and ever lower prices for consumers;*

9 (3) *in addition to the benefits of competition and*
10 *mobility, subscribers also benefit from the fact that*
11 *wireless phone numbers have not been publicly avail-*
12 *able;*

13 (4) *up until now, the privacy of wireless sub-*
14 *scribers has been safeguarded and thus vastly dimin-*
15 *ished the likelihood of subscribers receiving unwanted*
16 *or annoying phone call interruptions on their wireless*
17 *phones;*

18 (5) *moreover, because their wireless contact in-*
19 *formation, such as their phone number, have never*
20 *been publicly available in any published directory or*
21 *from any directory assistance service, subscribers have*
22 *come to expect that if their phone rings it's likely to*
23 *be a call from someone to whom they have personally*
24 *given their number;*

1 (6) *the wireless industry is poised to begin im-*
2 *plementing a directory assistance service so that call-*
3 *ers can reach wireless subscribers, including sub-*
4 *scribers who have not given such callers their wireless*
5 *phone number;*

6 (7) *while some wireless subscribers may find*
7 *such directory assistance service useful, current sub-*
8 *scribers deserve the right to choose whether they want*
9 *to participate in such a directory;*

10 (8) *because wireless users are typically charged*
11 *for incoming calls, consumers must be afforded the*
12 *ability to maintain the maximum amount of control*
13 *over how many calls they may expect to receive and,*
14 *in particular, control over the disclosure of their wire-*
15 *less phone number;*

16 (9) *current wireless subscribers who elect to par-*
17 *ticipate, or new wireless subscribers who decline to be*
18 *listed, in any new wireless directory assistance service*
19 *directory, including those subscribers who also elect*
20 *not to receive forwarded calls from any wireless direc-*
21 *tory assistance service, should not be charged for exer-*
22 *cising such rights;*

23 (10) *the marketplace has not yet adequately ex-*
24 *plained an effective plan to protect consumer privacy*
25 *rights;*

1 (11) Congress previously acted to protect the
2 wireless location information of subscribers by enact-
3 ing prohibitions on the disclosure of such sensitive in-
4 formation without the express prior authorization of
5 the subscriber; and

6 (12) the public interest would be served by simi-
7 larly enacting effective and industry-wide privacy
8 protections for consumers with respect to wireless di-
9 rectory assistance service.

10 **SEC. 3. CONSUMER CONTROL OF WIRELESS PHONE NUM-**
11 **BERS.**

12 Section 332(c) of the Communications Act of 1934 (47
13 U.S.C. 332(c)) is amended by adding at the end the fol-
14 lowing:

15 “(9) WIRELESS CONSUMER PRIVACY PROTEC-
16 TION.—

17 “(A) IN GENERAL.—A provider of commer-
18 cial mobile services, or any direct or indirect af-
19 filiate or agent of such a provider, may not in-
20 clude the wireless telephone number information
21 of any subscriber in any wireless directory as-
22 sistance service database unless—

23 “(i) the mobile service provider pro-
24 vides a conspicuous, separate notice to the
25 subscriber informing the subscriber of the

1 *right not to be listed in any wireless direc-*
2 *tory assistance service; and*

3 “(ii) *the mobile service provider ob-*
4 *tains express prior authorization for listing*
5 *from such subscriber, separate from any au-*
6 *thorization obtained to provide such sub-*
7 *scriber with commercial mobile service, or*
8 *any calling plan or service associated with*
9 *such commercial mobile service, and such*
10 *authorization has not been subsequently*
11 *withdrawn.*

12 “(B) *COST-FREE DE-LISTING.—A provider*
13 *of commercial mobile services, or any direct or*
14 *indirect affiliate or agent of such a provider,*
15 *shall remove the wireless telephone number infor-*
16 *mation of any subscriber from any wireless di-*
17 *rectory assistance service database upon request*
18 *by that subscriber and without any cost to the*
19 *subscriber.*

20 “(C) *PROTECTION OF WIRELESS PHONE*
21 *NUMBERS.—A telecommunications carrier shall*
22 *not disclose in its billing information provided*
23 *to customers wireless telephone number informa-*
24 *tion of subscribers who have indicated a pref-*
25 *erence to their commercial mobile services pro-*

1 *vider for not having their wireless telephone*
2 *number information disclosed. Notwithstanding*
3 *the preceding sentence, a telecommunications*
4 *carrier may disclose a portion of the wireless*
5 *telephone number in its billing information if*
6 *the actual number cannot be readily ascertained.*

7 *“(D) PUBLICATION OF DIRECTORIES PRO-*
8 *HIBITED.—A provider of commercial mobile*
9 *services, or any direct or indirect affiliate or*
10 *agent of such a provider, may not publish, in*
11 *printed, electronic, or other form, or sell or other-*
12 *wise disseminate, the contents of any wireless di-*
13 *rectory assistance service database, or any por-*
14 *tion or segment thereof unless—*

15 *“(i) the mobile service provider pro-*
16 *vides a conspicuous, separate notice to the*
17 *subscriber informing the subscriber of the*
18 *right not to be listed; and*

19 *“(ii) the mobile service provider ob-*
20 *tains express prior authorization for listing*
21 *from such subscriber, separate from any au-*
22 *thorization obtained to provide such sub-*
23 *scriber with commercial mobile service, or*
24 *any calling plan or service associated with*
25 *such commercial mobile service, and such*

1 *authorization has not been subsequently*
2 *withdrawn.*

3 “(E) *NO CONSUMER FEE FOR RETAINING*
4 *PRIVACY.—A provider of commercial mobile serv-*
5 *ices may not charge any subscriber for exercising*
6 *any of the rights under this paragraph.*

7 “(F) *STATE AND LOCAL LAWS PRE-*
8 *EMPTED.—To the extent that any State or local*
9 *government imposes requirements on providers of*
10 *commercial mobile services, or any direct or in-*
11 *direct affiliate or agent of such providers, that*
12 *are inconsistent with the requirements of this*
13 *paragraph, this paragraph preempts such State*
14 *or local requirements.*

15 “(G) *DEFINITIONS.—In this paragraph:*

16 “(i) *CALLING PARTY’S IDENTITY.—The*
17 *term ‘calling party’s identity’ means the*
18 *telephone number of the calling party or the*
19 *name of subscriber to such telephone, or an*
20 *oral or text message which provides suffi-*
21 *cient information to enable a commercial*
22 *mobile services subscriber to determine who*
23 *is calling.*

24 “(ii) *UNLISTED COMMERCIAL MOBILE*
25 *SERVICES SUBSCRIBER.—The term ‘unlisted*

1 *commercial mobile services subscriber'*
2 *means a subscriber to commercial mobile*
3 *services who has not provided express prior*
4 *consent to a commercial mobile service pro-*
5 *vider to be included in a wireless directory*
6 *assistance service database.*

7 “(iii) *WIRELESS TELEPHONE NUMBER*
8 *INFORMATION.—The term ‘wireless telephone*
9 *number information’ means the telephone*
10 *number, electronic address, and any other*
11 *identifying information by which a calling*
12 *party may reach a subscriber to commercial*
13 *mobile services, and which is assigned by a*
14 *commercial mobile service provider to such*
15 *subscriber, and includes such subscriber’s*
16 *name and address.*

17 “(iv) *WIRELESS DIRECTORY ASSIST-*
18 *ANCE SERVICE.—The term ‘wireless direc-*
19 *tory assistance service’ means any service*
20 *for connecting calling parties to a sub-*
21 *scriber of commercial mobile service when*
22 *such calling parties themselves do not pos-*
23 *sess such subscriber’s wireless telephone*
24 *number information.”.*

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A BILL

To amend the Communications Act of 1934 to protect the privacy rights of subscribers to wireless communications services.

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