

Calendar No. 810

108TH CONGRESS }
2d Session }

SENATE

{ REPORT
108-423 }

WIRELESS 411 PRIVACY ACT

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 1963

together with

MINORITY VIEWS



DECEMBER 7, 2004.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

39-010

WASHINGTON : 2004

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

JOHN McCAIN, Arizona, *Chairman*

TED STEVENS, Alaska	ERNEST F. HOLLINGS, South Carolina
CONRAD BURNS, Montana	DANIEL K. INOUE, Hawaii
TRENT LOTT, Mississippi	JOHN D. ROCKEFELLER IV, West Virginia
KAY BAILEY HUTCHISON, Texas	JOHN F. KERRY, Massachusetts
OLYMPIA J. SNOWE, Maine	JOHN B. BREAUX, Louisiana
SAM BROWNBACK, Kansas	BYRON L. DORGAN, North Dakota
GORDON SMITH, Oregon	RON WYDEN, Oregon
PETER G. FITZGERALD, Illinois	BARBARA BOXER, California
JOHN ENSIGN, Nevada	BILL NELSON, Florida
GEORGE ALLEN, Virginia	MARIA CANTWELL, Washington
JOHN E. SUNUNU, New Hampshire	FRANK LAUTENBERG, New Jersey

JEANNE BUMPUS, *Staff Director and General Counsel*

ROB FREEMAN, *Deputy Staff Director*

SAMUEL WHITEHORN, *Democratic Staff Director and Chief Counsel*

MARGARET SPRING, *Democratic Senior Counsel*

Calendar No. 810

108TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 108-423

WIRELESS 411 PRIVACY ACT

DECEMBER 7, 2004.—Ordered to be printed

Mr. MCCAIN, from the Committee on Commerce, Science, and
Transportation, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany S. 1963]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1963) to amend the Communications Act of 1934 to protect the privacy rights of subscribers to wireless communications services, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of this legislation is to amend section 332(c) of the Communications Act of 1934 (47 U.S.C. 332(c)) by adding a new paragraph (9) to: (1) require providers of wireless directory assistance services to obtain the express prior authorization of a subscriber before listing his or her wireless telephone number in a directory assistance database; (2) require such providers to remove the wireless telephone number of any subscriber from any directory assistance database upon request and without any charge to the subscriber; (3) require telecommunications carriers to avoid disclosing on their customer bills any wireless telephone numbers of consumers who have indicated such a preference to their wireless carriers; (4) prohibit the publishing (in printed, electronic, or other form), sale, or other dissemination of a wireless telephone number without consent; and (5) prohibit wireless directory assistance pro-

viders from charging consumers for exercising any of their rights provided under this legislation.

BACKGROUND AND NEEDS

Wireless service providers have developed plans to create a nationwide directory of wireless telephone numbers for those subscribers who wish to be reachable on their wireless phones through directory assistance services, also known as “411” services. Some wireless subscribers, including consumers without wireline phones, professionals working outside an office environment, and small business owners providing services away from a central location, are increasingly requesting that service providers make their numbers more widely available to the public. Industry efforts to create a nationwide directory, however, have raised privacy concerns for consumers who wish to keep their wireless phone numbers private, and who are uncertain whether they will be provided with a choice to do so under proposed directory services.

According to The Pierz Group, an independent research and analysis group examining wireless directory services, an estimated 4.8 million wireless subscribers (or approximately 3 percent of wireless subscribers nationwide) have listed their phone numbers in a published directory—either in phone books or in directories used for operator services. The Pierz Group found that a majority of these listings are for subscribers, such as contractors and other home service professionals, whose businesses require them to travel within a particular geographic region where their customers are located.¹ Additionally, a survey released by The Pierz Group on August 30, 2004, found that 11 percent, or nearly 18 million wireless subscribers, would list their numbers in public directories without any privacy protections if those services were offered by wireless carriers today. According to the report, this represents a five-fold increase over the past year (from 2 percent to 11 percent) of wireless subscribers that would now publicly list their wireless numbers without any privacy protections. The Pierz Group believes a principal reason for this result is increased consumer confidence in the enforcement of telemarketing rules following the effective implementation of the national Do-Not-Call registry in 2003.²

Despite the demand for listing by a small number of subscribers even without privacy protections, participating wireless carriers have pledged to address broader consumer concerns about wireless number privacy by taking steps to protect consumers’ privacy preferences. Some consumer privacy groups, however, continue to raise concerns over the risks of creating a large, multi-carrier database of wireless numbers and whether industry’s proposals to include privacy protections are sufficient.

Since wireless telephone service was first introduced, wireless consumers have considered their numbers private and assumed they retained ultimate control over who would have access to their telephone numbers. In addition, because wireless customers in the U.S. pay for all in- and out-bound calls (unlike European markets

¹Kathleen A. Pierz, Adding Mobile Numbers to the U.S. Directory Assistance/Enquiry Database, p. 48 (June 30, 2004).

²Kathleen A. Pierz, Consumers and the Mobile 411 Directory: A National Consumer Research Study to Assess Consumer Attitudes toward Adding Mobile Numbers to the Directory Assistance/Enquiry Database (“Consumer Research Study”), p. 15 (August 30, 2004).

where the calling party pays), concerns still remain about consumers incurring unwanted charges or exhausting allotted minutes of use by receiving calls they do not want, even if they have large buckets of minutes included in their service package and therefore charges would likely be minimal. Given the industry's expressed pledge to provide privacy protections sought by consumer and privacy groups is whether privacy requirements and consumer protections should be required by law, or whether market forces are sufficient to protect consumers.

The primary concerns surrounding the wireless number directory center over two issues: who would have access to subscribers' numbers, and what hurdles (including additional costs) face subscribers who decide to have their numbers omitted from such a directory? Proponents of the wireless phone directory assert that the vendor chosen to implement the directory is currently working with carriers to ensure that the database they put in place will be secure and responsive to consumer concerns about preventing or limiting general accessibility to their listed wireless number and related subscriber information. In particular, participating carriers have indicated that the wireless directory services they are proposing would take some or all of the following measures to protect consumer privacy:

- provide robust notice and choice to their subscribers regarding any proposed directory services, ensuring that subscribers must first opt in before their numbers are listed in any directory assistance database;
- enable subscribers to keep their numbers out of a directory assistance database at no additional charge;
- prohibit sharing of subscriber numbers with third parties, particularly telemarketers; and
- prohibit the publishing in written, electronic, or otherwise web-accessible form of any subscriber numbers listed in a directory.

According to The Pierz Group's most recent survey, if these protections were guaranteed, up to 52 percent of wireless subscribers, or 84.2 million customers, would be willing to list their wireless phone numbers in a directory assistance service.

Although the participating national wireless carriers have committed to voluntarily adopt the privacy and consumer protections outlined above, consumer and privacy advocates argue that these policies have yet to appear in many of the contracts governing the terms of service between the wireless carriers and their new or existing customers.

National wireless carriers who are participating in the proposed multi-company directory and have agreed to these standards believe that preemptive legislation mandating such requirements is unnecessary in the competitive wireless industry, and that it will restrict carriers from creating more robust business-driven solutions to meet consumer demands as they evolve. Consumer and privacy rights activists advocate the same privacy measures being considered by the carriers, but argue that Congress should establish legally binding baseline requirements to ensure that wireless companies do not alter their policies as their business models change.

LEGISLATIVE HISTORY

On November 25, 2003, Senator Specter introduced S. 1963, the “Wireless 411 Privacy Act”. The bill is currently cosponsored by Senators Boxer, Dayton, Enzi, Kennedy, Lautenberg, Leahy, Nelson, and Schumer. Identical legislation was also introduced in the 108th Congress in the Senate by Senator DeWine (S. 1973) and in the House of Representatives by Rep. Pitts (H.R. 3558). Both Senate bills, S. 1963 and S. 1973, were referred to the Committee on Commerce, Science, and Transportation.

On September 21, 2004, the Committee held a hearing on S. 1963. Witnesses at the hearing included Senator Specter as well as a diverse group of representatives from several companies, an industry association, a public interest group, and a private party, all interested in the privacy regulation of wireless directory assistance services.

On September 22, 2004, the Committee met in open executive session to consider an amendment in the nature of a substitute to S. 1963 offered by Senator Boxer that made several substantive changes to the bill’s provisions, as introduced. The amendment was adopted by a roll call vote of 12–10 and the bill was ordered to be reported, as amended.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

S. 1963—Wireless 411 Privacy Act

S. 1963 would prohibit wireless telephone providers from listing subscribers’ numbers in a directory unless the subscribers have authorized such services. Wireless telephone providers also would be required to remove a subscriber’s number from any wireless directory assistance database if requested by a subscriber and without any charge to that subscriber.

Enacting S. 1963 could affect direct spending and receipts because providers who violate the provisions of the bill could be subject to civil or criminal penalties. Based on information from the Federal Communications Commission, CBO expects that there would be few violations of the bill’s provisions. Thus, CBO estimates that any collections for civil or criminal penalties would not be significant. In addition, because the agency expects a relatively high degree of compliance with the bill’s provisions, CBO estimates that any costs associated with the enforcing the bill’s requirements, which would be subject to the availability of appropriated funds, would not be significant.

S. 1963 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the resulting costs for state, local, and tribal governments would be minimal and would not exceed the threshold established in UMRA (\$60 million in 2004, adjusted annually for inflation). Section 3(F) would specifically preempt state and local laws that require wireless telephone providers to publish directories of the numbers they serve. CBO is not aware of any such laws—based on conversations

with state and local officials—and states generally are moving toward the standard that would be established in S. 1963. Therefore, CBO estimates that any associated costs would be minimal.

CBO has not completed an analysis of the private-sector mandates in the bill. That analysis will be provided later in a separate report.

The CBO staff contacts for this estimate are Susanne S. Mehlman (for federal costs), and Sarah Puro (for the state, local, and tribal impact). This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

S. 1963 would establish Federal requirements regarding the use of consumers' wireless telephone numbers in directory assistance databases provided by wireless service providers and their affiliates or agents. In this respect, the bill would cover any consumer or provider of a wireless telephone service in the United States for which a telephone number is used. Additionally, S. 1963 requires every telecommunications carrier to not disclose in its billing information provided to customers any wireless telephone number information of subscribers who wish to keep that information private. Therefore, the legislation would also cover every subscriber of telecommunications services that receives billing information about calls made to or from wireless telephone numbers, and any carrier that provides such information to its subscribers.

ECONOMIC IMPACT

S. 1963 would require that wireless carriers providing directory assistance services containing subscribers' telephone numbers (1) comply with federally mandated notice, consent and removal standards in order to provide the service, (2) refrain from charging consumers for certain related services, including any election to keep their numbers unlisted, (3) refrain from publishing, in printed, electronic, or other form, or selling or otherwise disseminating any contents of directory assistance service databases, and (4) establish methods to relay information about its subscribers' privacy preferences (with respect to their wireless telephone numbers) to other telecommunications carriers that may publish the full number in a customer billing statement. Although one national wireless carrier has indicated it will not provide such directory assistance services and other national carriers have indicated that they would provide these services only under substantially similar restrictions, the legislation would nonetheless create compliance costs on such providers, as well as all telecommunications carriers whose customer bills may disclose wireless telephone numbers, in the form of equipment upgrades or personnel additions in order to meet the new Federal requirements. Such expenditures may have an economic impact on such businesses and the wireless industry in general, and the costs may be passed on to consumers of wireless and other

telecommunications services. However, according to The Pierz Group, the introduction of a wireless directory assistance service is estimated to bring in nearly \$2 billion in incremental revenues for the industry by 2008, which would be generated from additional calls to directory assistance services as well as from additional minutes of use on the network. These projected revenues may offset many of the potential costs resulting from this legislation.

PRIVACY

S. 1963 would likely increase consumer privacy by restricting the use and publication of wireless telephone numbers in directory assistance databases absent strict requirements that consumers are sufficiently informed and consent to such use or publication. Such restrictions should result in a reduced likelihood of wireless subscribers receiving unwanted telephone calls. In this regard, the legislation is similar to the stated privacy goals of existing telemarketing regulations, which already ban autodialed telemarketing calls (including text messages) to wireless telephones. Additionally, because the legislation would prohibit wireless service providers from charging a fee to keep consumers' numbers unlisted (a practice permitted for wireline local exchange carriers), it is likely that more consumers will choose to keep their wireless telephone numbers private by not participating in the wireless directory assistance service.

PAPERWORK

S. 1963 is expected to have minimal or no impact on current paperwork levels.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 would set forth the short title of the bill as the "Wireless 411 Privacy Act."

Section 2. Findings

Section 2 would set forth Congress's factual findings in support of the legislation.

Section 3. Consumer control of wireless phone numbers

Section 3 would amend section 332(c) of the Communications Act of 1934 (47 U.S.C. 332(c)) by adding a new paragraph 9 to provide for wireless consumer privacy protection.

Subparagraph (A) of paragraph (9) would prohibit wireless carriers (and their direct or indirect affiliates or agents) from including wireless telephone information of any current subscriber in any directory assistance database unless: (1) the carrier first provides a separate, conspicuous notice to the wireless subscriber of the right not to be listed, and (2) the carrier obtains express prior authorization from the subscriber to be included in the directory and such authorization has not been subsequently withdrawn.

Subparagraph (B) of paragraph (9) would require wireless carriers (and their direct or indirect affiliates or agents) to remove the wireless telephone number of any subscriber from any directory as-

sistance database upon request and without any charge to the subscriber.

Subparagraph (C) of paragraph (9) would prohibit telecommunication carriers from disclosing in customer bills any wireless telephone number that a wireless subscriber has requested of its own wireless carrier to not disclose. Subparagraph (C), however, would permit telecommunications carriers to disclose a portion of such a wireless number so long as the actual number could not be readily ascertained, a practice sometimes referred to as “masking” (i.e., such a wireless number may appear on a bill as “202-228-XXXX” or in some similarly masked fashion).

Subparagraph (D) of paragraph (9) would prohibit wireless carriers (and their direct or indirect affiliates or agents) from publishing, in printed, electronic, or other form, or from selling or otherwise disseminating, the contents of any wireless directory assistance service database (or any portion or segment of one) unless: (1) the carrier first provides a separate, conspicuous notice to the wireless subscriber of the right not to be listed, and (2) the carrier obtains express prior authorization from the subscriber to be included in the directory and such authorization has not been subsequently withdrawn.

Subparagraph (E) of paragraph (9) would prohibit wireless carriers from charging subscribers a fee for exercising any of their rights provided under this section (i.e., choosing to not participate in a wireless directory assistance database).

Subparagraph (F) of paragraph (9) would preempt State and local government imposition of requirements on wireless carriers (and their direct or indirect affiliates or agents) that are inconsistent with the requirements of paragraph (9).

Subparagraph (G) of paragraph (9) would set forth certain definitions for use in this section. In particular, “wireless directory assistance service” means any service that connects a calling party to a wireless subscriber when such calling party does not already possess such subscriber’s wireless telephone number information. Additionally, “wireless telephone number information” means the telephone number, electronic address, and any other identifying information by which a calling party may reach a wireless subscriber, including such subscriber’s name and address.

ROLLCALL VOTES IN COMMITTEE

In accordance with paragraph 7(c) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following description of the record votes during its consideration of S. 1963:

Senator Boxer offered an amendment in the nature of a substitute. By a rollcall vote of 12 yeas and 10 nays as follows, the amendment was adopted:

YEAS—12	NAYS—10
Mrs. Hutchison	Mr. Stevens ¹
Ms. Snowe	Mr. Burns
Mr. Hollings	Mr. Lott
Mr. Inouye ¹	Mr. Brownback ¹
Mr. Rockefeller	Mr. Smith
Mr. Breaux	Mr. Fitzgerald ¹
Mr. Dorgan	Mr. Ensign

Mr. Wyden
Mrs. Boxer
Mr. Nelson
Ms. Cantwell
Mr. Lautenberg

¹By proxy

Mr. Allen
Mr. Sununu
Mr. McCain

MINORITY VIEWS OF SENATOR ALLEN

S. 1963 is unnecessary and counterproductive for an industry that has a proven track record of innovation, lower prices, and protecting consumer privacy. The six largest wireless carriers, representing more than three-quarters of all subscribers,¹ have specifically committed to this Committee that they will safeguard the privacy of wireless phone numbers, either by creating a directory assistance database that includes only the numbers of subscribers who affirmatively choose to be listed through an opt-in method or by not participating in any wireless directory assistance program. Those carriers who are planning a database have further committed not to charge subscribers who elect to keep their wireless numbers unlisted or if they elect to remove their numbers from the database. In testimony before the Committee, the wireless industry also assured us that wireless numbers from the directory assistance database will not be published in a directory and that the aggregated database will not be sold to any third-party or be available anywhere on the Internet. Finally, child privacy will be protected because customers must be 18 years or older to sign a contract and choose whether to be listed in the database. In the face of these commitments, I see no need for the bill.

Legislating in advance of any evidence of a problem is not only unnecessary in this case, it is also counterproductive. The wireless industry has thrived in the deregulatory environment established by Congress in 1993 and is now one of the country's most competitive businesses. More than 90 percent of Americans live in markets served by four or more wireless operators, and a nearly ubiquitous 98 percent of Americans live in a market served by three or more operators. Competition has driven wireless carriers to offer better service at lower prices. Carriers compete on the basis of service and feature options and calling plans, including lower prices, free voicemail, caller ID, and 3-way calling. Competitive forces in the wireless industry will discipline market participants more effectively than any regulator or regulation can.

Imposing government rules for a wireless service offering would represent a marked and unjustified departure from the successful bipartisan policy of deregulation. Faced with unnecessary government regulation, carriers may decide not to offer a directory assistance database at all, leaving small businesses and others who rely substantially or even exclusively on their wireless phones no other choice but to pay to have their number listed in a landline directory—if they have that option at all, which many do not. The bill may even deter future innovations and industry initiatives for fear

¹ Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Service, Ninth Report, FCC 04-216 ¶20 & Table 4 (rel. Sept. 28, 2004).

government mandates will be added even before the first customer signs up.

Representative of the problems with this bill is the requirement that all telecommunications carriers, wireline as well as wireless, "mask" wireless telephone number information in the bills they send to their customers. While seemingly innocuous, compliance with this mandate would be costly and onerous. Carriers would essentially have to create a separate database of customers who elected not to have their number included in the directory assistance database, and every wireline and wireless carrier would have to check bills against that database to remove any numbers of customers who had not opted into the directory. No carrier currently has the technology to create the required database, query it, and reflect the results on bills. Requiring the creation of a separate database as a condition of providing directory assistance creates a very real risk that the entire directory assistance project will be deferred or even abandoned, to the detriment of consumers who desire such a resource.

Let me be clear that consumer privacy must be effectively protected, in the context of wireless services and otherwise. If wireless carriers do not act in conformance with the commitments they have made to us, I would not hesitate to support remedial legislation. In this case, however, passing a law when there is no evidence of harm and every indication that statutory intervention is unneeded not only puts the cart before the horse, it will discourage the private sector from even trying to develop non-regulatory solutions to such matters as privacy protection. For these reasons, I oppose S. 1963.

GEORGE ALLEN.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, 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 material is printed in italic, existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934

SEC. 332. MOBILE SERVICES.

[47 U.S.C. 332]

(a) FACTORS WHICH COMMISSION MUST CONSIDER.—In taking actions to manage the spectrum to be made available for use by the private mobile services, the Commission shall consider, consistent with section 1 of this Act, whether such actions will—

(1) promote the safety of life and property;

(2) improve the efficiency of spectrum use and reduce the regulatory burden upon spectrum users, based upon sound engineering principles, user operational requirements, and market-place demands;

(3) encourage competition and provide services to the largest feasible number of users; or

(4) increase interservice sharing opportunities between private mobile services and other services.

(b)(1) The Commission, in coordinating the assignment of frequencies to stations in the private mobile services and in the fixed services (as defined by the Commission by rule), shall have authority to utilize assistance furnished by advisory coordinating committees consisting of individuals who are not officers or employees of the Federal Government.

(2) The authority of the Commission established in this subsection shall not be subject to or affected by the provisions of part III of title 5, United States Code, or section 3679(b) of the Revised Statutes (31 U.S.C. 665(b)).

(3) Any person who provides assistance to the Commission under this subsection shall not be considered, by reason of having provided such assistance, a Federal employee.

(4) Any advisory coordinating committee which furnishes assistance to the Commission under this subsection shall not be subject to the provisions of the Federal Advisory Committee Act.

(c) REGULATORY TREATMENT OF MOBILE SERVICES.—

(1) COMMON CARRIER TREATMENT OF COMMERCIAL MOBILE SERVICES.—(A) A person engaged in the provision of a service that is a commercial mobile service shall, insofar as such per-

son is so engaged, be treated as a common carrier for purposes of this Act, except for such provisions of title II as the Commission may specify by regulation as inapplicable to that service or person. In prescribing or amending any such regulation, the Commission may not specify any provision of section 201, 202, or 208, and may specify any other provision only if the Commission determines that—

(i) enforcement of such provision is not necessary in order to ensure that the charges, practices, classifications, or regulations for or in connection with that service are just and reasonable and are not unjustly or unreasonably discriminatory;

(ii) enforcement of such provision is not necessary for the protection of consumers; and

(iii) specifying such provision is consistent with the public interest.

(B) Upon reasonable request of any person providing commercial mobile service, the Commission shall order a common carrier to establish physical connections with such service pursuant to the provisions of section 201 of this Act. Except to the extent that the Commission is required to respond to such a request, this subparagraph shall not be construed as a limitation or expansion of the Commission's authority to order interconnection pursuant to this Act.

(C) The Commission shall review competitive market conditions with respect to commercial mobile services and shall include in its annual report an analysis of those conditions. Such analysis shall include an identification of the number of competitors in various commercial mobile services, an analysis of whether or not there is effective competition, an analysis of whether any of such competitors have a dominant share of the market for such services, and a statement of whether additional providers or classes of providers in those services would be likely to enhance competition. As a part of making a determination with respect to the public interest under subparagraph (A)(iii), the Commission shall consider whether the proposed regulation (or amendment thereof) will promote competitive market conditions, including the extent to which such regulation (or amendment) will enhance competition among providers of commercial mobile services. If the Commission determines that such regulation (or amendment) will promote competition among providers of commercial mobile services, such determination may be the basis for a Commission finding that such regulation (or amendment) is in the public interest.

(D) The Commission shall, not later than 180 days after the date of enactment of this subparagraph, complete a rulemaking required to implement this paragraph with respect to the licensing of personal communications services, including making any determinations required by subparagraph (C).

(2) NON-COMMON CARRIER TREATMENT OF PRIVATE MOBILE SERVICES.—A person engaged in the provision of a service that is a private mobile service shall not, insofar as such person is so engaged, be treated as a common carrier for any purpose under this Act. A common carrier (other than a person that

was treated as a provider of a private land mobile service prior to the enactment of the Omnibus Budget Reconciliation Act of 1993) shall not provide any dispatch service on any frequency allocated for common carrier service, except to the extent such dispatch service is provided on stations licensed in the domestic public land mobile radio service before January 1, 1982. The Commission may by regulation terminate, in whole or in part, the prohibition contained in the preceding sentence if the Commission determines that such termination will serve the public interest.

(3) STATE PREEMPTION.—(A) Notwithstanding sections 2(b) and 221(b), no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services. Nothing in this subparagraph shall exempt providers of commercial mobile services (where such services are a substitute for land line telephone exchange service for a substantial portion of the communications within such State) from requirements imposed by a State commission on all providers of telecommunications services necessary to ensure the universal availability of telecommunications service at affordable rates. Notwithstanding the first sentence of this subparagraph, a State may petition the Commission for authority to regulate the rates for any commercial mobile service and the Commission shall grant such petition if such State demonstrates that—

(i) market conditions with respect to such services fail to protect subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory; or

(ii) such market conditions exist and such service is a replacement for land line telephone exchange service for a substantial portion of the telephone land line exchange service within such State.

The Commission shall provide reasonable opportunity for public comment in response to such petition, and shall, within 9 months after the date of its submission, grant or deny such petition. If the Commission grants such petition, the Commission shall authorize the State to exercise under State law such authority over rates, for such periods of time, as the Commission deems necessary to ensure that such rates are just and reasonable and not unjustly or unreasonably discriminatory.

(B) If a State has in effect on June 1, 1993, any regulation concerning the rates for any commercial mobile service offered in such State on such date, such State may, no later than 1 year after the date of enactment of the Omnibus Budget Reconciliation Act of 1993, petition the Commission requesting that the State be authorized to continue exercising authority over such rates. If a State files such a petition, the State's existing regulation shall, notwithstanding subparagraph (A), remain in effect until the Commission completes all action (including any reconsideration) on such petition. The Commission

shall review such petition in accordance with the procedures established in such subparagraph, shall complete all action (including any reconsideration) within 12 months after such petition is filed, and shall grant such petition if the State satisfies the showing required under subparagraph (A)(i) or (A)(ii). If the Commission grants such petition, the Commission shall authorize the State to exercise under State law such authority over rates, for such period of time, as the Commission deems necessary to ensure that such rates are just and reasonable and not unjustly or unreasonably discriminatory. After a reasonable period of time, as determined by the Commission, has elapsed from the issuance of an order under subparagraph (A) or this subparagraph, any interested party may petition the Commission for an order that the exercise of authority by a State pursuant to such subparagraph is no longer necessary to ensure that the rates for commercial mobile services are just and reasonable and not unjustly or unreasonably discriminatory. The Commission shall provide reasonable opportunity for public comment in response to such petition, and shall, within 9 months after the date of its submission, grant or deny such petition in whole or in part.

(4) REGULATORY TREATMENT OF COMMUNICATIONS SATELLITE CORPORATION.—Nothing in this subsection shall be construed to alter or affect the regulatory treatment required by title IV of the Communications Satellite Act of 1962 of the corporation authorized by title III of such Act.

(5) SPACE SEGMENT CAPACITY.—Nothing in this section shall prohibit the Commission from continuing to determine whether the provision of space segment capacity by satellite systems to providers of commercial mobile services shall be treated as common carriage.

(6) FOREIGN OWNERSHIP.—The Commission, upon a petition for waiver filed within 6 months after the date of enactment of the Omnibus Budget Reconciliation Act of 1993, may waive the application of section 310(b) to any foreign ownership that lawfully existed before May 24, 1993, of any provider of a private land mobile service that will be treated as a common carrier as a result of the enactment of the Omnibus Budget Reconciliation Act of 1993, but only upon the following conditions:

(A) The extent of foreign ownership interest shall not be increased above the extent which existed on May 24, 1993.

(B) Such waiver shall not permit the subsequent transfer of ownership to any other person in violation of section 310(b).

(7) PRESERVATION OF LOCAL ZONING AUTHORITY.—

(A) GENERAL AUTHORITY.—Except as provided in this paragraph, nothing in this Act shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.

(B) LIMITATIONS.—

(i) The regulation of the placement, construction, and modification of personal wireless service facilities

by any State or local government or instrumentality thereof—

(I) shall not unreasonably discriminate among providers of functionally equivalent services; and

(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

(ii) A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.

(iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.

(iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.

(v) Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.

(C) DEFINITIONS.—For purposes of this paragraph—

(i) the term “personal wireless services” means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services;

(ii) the term “personal wireless service facilities” means facilities for the provision of personal wireless services; and

(iii) the term “unlicensed wireless service” means the offering of telecommunications services using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services (as defined in section 303(v)).

(8) MOBILE SERVICES ACCESS.—A person engaged in the provision of commercial mobile services, insofar as such person is so engaged, shall not be required to provide equal access to common carriers for the provision of telephone toll services. If the Commission determines that subscribers to such services

are denied access to the provider of telephone toll services of the subscribers' choice, and that such denial is contrary to the public interest, convenience, and necessity, then the Commission shall prescribe regulations to afford subscribers unblocked access to the provider of telephone toll services of the subscribers' choice through the use of a carrier identification code assigned to such provider or other mechanism. The requirements for unblocking shall not apply to mobile satellite services unless the Commission finds it to be in the public interest to apply such requirements to such services.

(9) *WIRELESS CONSUMER PRIVACY PROTECTION.*—

(A) *IN GENERAL.*—A provider of commercial mobile services, or any direct or indirect affiliate or agent of such a provider, may not include the wireless telephone number information of any subscriber in any wireless directory assistance service database unless—

(i) the mobile service provider provides a conspicuous, separate notice to the subscriber informing the subscriber of the right not to be listed in any wireless directory assistance service; and

(ii) the mobile service provider obtains express prior authorization for listing from such subscriber, separate from any authorization obtained to provide such subscriber with commercial mobile service, or any calling plan or service associated with such commercial mobile service, and such authorization has not been subsequently withdrawn.

(B) *COST-FREE DE-LISTING.*—A provider of commercial mobile services, or any direct or indirect affiliate or agent of such a provider, shall remove the wireless telephone number information of any subscriber from any wireless directory assistance service database upon request by that subscriber and without any cost to the subscriber.

(C) *PROTECTION OF WIRELESS PHONE NUMBERS.*—A telecommunications carrier shall not disclose in its billing information provided to customers wireless telephone number information of subscribers who have indicated a preference to their commercial mobile services provider for not having their wireless telephone number information disclosed. Notwithstanding the preceding sentence, a telecommunications carrier may disclose a portion of the wireless telephone number in its billing information if the actual number cannot be readily ascertained.

(D) *PUBLICATION OF DIRECTORIES PROHIBITED.*—A provider of commercial mobile services, or any direct or indirect affiliate or agent of such a provider, may not publish, in printed, electronic, or other form, or sell or otherwise disseminate, the contents of any wireless directory assistance service database, or any portion or segment thereof unless—

(i) the mobile service provider provides a conspicuous, separate notice to the subscriber informing the subscriber of the right not to be listed; and

(ii) the mobile service provider obtains express prior authorization for listing from such subscriber, separate

from any authorization obtained to provide such subscriber with commercial mobile service, or any calling plan or service associated with such commercial mobile service, and such authorization has not been subsequently withdrawn.

(E) NO CONSUMER FEE FOR RETAINING PRIVACY.—A provider of commercial mobile services may not charge any subscriber for exercising any of the rights under this paragraph.

(F) STATE AND LOCAL LAWS PRE-EMPTED.—To the extent that any State or local government imposes requirements on providers of commercial mobile services, or any direct or indirect affiliate or agent of such providers, that are inconsistent with the requirements of this paragraph, this paragraph preempts such State or local requirements.

(G) DEFINITIONS.—In this paragraph:

(i) CALLING PARTY'S IDENTITY.—The term "calling party's identity" means the telephone number of the calling party or the name of subscriber to such telephone, or an oral or text message which provides sufficient information to enable a commercial mobile services subscriber to determine who is calling.

(ii) UNLISTED COMMERCIAL MOBILE SERVICES SUBSCRIBER.—The term "unlisted commercial mobile services subscriber" means a subscriber to commercial mobile services who has not provided express prior consent to a commercial mobile service provider to be included in a wireless directory assistance service database.

(iii) WIRELESS TELEPHONE NUMBER INFORMATION.—The term "wireless telephone number information" means the telephone number, electronic address, and any other identifying information by which a calling party may reach a subscriber to commercial mobile services, and which is assigned by a commercial mobile service provider to such subscriber, and includes such subscriber's name and address.

(iv) WIRELESS DIRECTORY ASSISTANCE SERVICE.—The term "wireless directory assistance service" means any service for connecting calling parties to a subscriber of commercial mobile service when such calling parties themselves do not possess such subscriber's wireless telephone number information.

(d) DEFINITIONS.—For purposes of this section—

(1) the term "commercial mobile service" means any mobile service (as defined in section 3) that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission;

(2) the term "interconnected service" means service that is interconnected with the public switched network (as such terms are defined by regulation by the Commission) or service

for which a request for interconnection is pending pursuant to subsection (c)(1)(B); and

(3) the term “private mobile service” means any mobile service (as defined in section 3) that is not a commercial mobile service or the functional equivalent of a commercial mobile service, as specified by regulation by the Commission.

