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To require mobile service providers and smartphone manufacturers to give consumers the ability to remotely delete data from smartphones and render smartphones inoperable.

IN THE HOUSE OF REPRESENTATIVES

APRIL 23, 2015

Mr. SERRANO (for himself, Mr. VARGAS, Mr. GRAYSON, and Ms. JACKSON LEE) introduced the following bill; which was referred to the Committee on Energy and Commerce

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A BILL

To require mobile service providers and smartphone manufacturers to give consumers the ability to remotely delete data from smartphones and render smartphones inoperable.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Smartphone Theft Prevention Act of 2015''.

SEC. 2. FINDINGS.

Congress finds that—

(1) mobile device theft costs consumers billions of dollars each year, according to the Federal Communications Commission;

(2) 1 in 3 robberies include the theft of a mobile device;

(3) carriers, manufacturers, law enforcement, the Federal Communications Commission, and State governments have worked to address the growing trend of mobile device theft, but more remains to be done;

(4) consumers deserve to have the most secure technology available to protect them and their information;

(5) technological protections continue to develop, evolve, and improve in ways that are good for the economy and the consumers of the United States, and for public safety in the United States;

(6) the wireless industry should work with law enforcement to educate consumers about the security tools that are available to them and how to keep their data, their devices, and themselves safe;

(7) because engineering and security needs change rapidly, the mobile device industry, law enforcement, and consumer advocates are best suited

to proactively develop solutions to protect consumers, drive innovation, and deter theft; and

(8) major cities such as San Francisco, New York, and London have seen recent decreases in smartphone theft since carriers and manufacturers began rolling out sophisticated new technological functions to protect consumers from theft.

SEC. 3. FUNCTION FOR STOLEN SMARTPHONES.

(a) IN GENERAL.—Part I of title III of the Communications Act of 1934 (47 U.S.C. 301 et seq.) is amended by adding at the end the following:

"SEC. 343. FUNCTION FOR STOLEN SMARTPHONES.

"(a) DEFINITIONS.—

"(1) IN GENERAL.—In this section—

"(A) the term 'account holder', with respect to a smartphone—

"(i) means the person who holds the account through which commercial mobile service or commercial mobile data service is provided on the smartphone; and

"(ii) includes a person authorized by the person described in clause (i) to take actions with respect to the smartphone;

"(B) the term 'commercial mobile data service' has the meaning given the term in sec-

tion 6001 of the Middle Class Tax Relief and Job Creation Act of 2012 (47 U.S.C. 1401);

"(C) the term 'commercial mobile service' has the meaning given the term in section 332; and

"(D) the term 'smartphone' means a cellular radio telephone or other mobile voice communications handset device—

"(i) on which commercial mobile service or commercial mobile data service is provided; and

"(ii) that—

"(I) utilizes a mobile operating system;

"(II) possesses advanced data capabilities, including software applications, Internet access, digital voice services, email, and text messaging;

"(III) has wireless network connectivity; and

"(IV) is capable of operating on a long-term evolution network.

"(2) FCC AUTHORITY TO MODIFY DEFINITION OF 'SMARTPHONE'.—The Commission may modify the definition of the term 'smartphone' under para-

graph (1) if the Commission determines that circumstances require such a modification.

"(b) REQUIREMENTS.—

"(1) FUNCTION.—

"(A) IN GENERAL.—A provider of commercial mobile service or commercial mobile data service on a smartphone, in coordination with the manufacturer of, and the provider of the operating system for, the smartphone, shall—

"(i) make available on the smartphone a function described in subparagraph (B); and

"(ii) ensure that—

"(I) during the initial device setup process, the smartphone prompts the account holder to enable the function described in subparagraph (B); and

"(II) only the account holder is able to opt out of enabling the function described in subparagraph (B).

"(B) FUNCTION DETAILS.—A function described in this subparagraph, with respect to a smartphone, is a function that—

"(i) may only be used by the account holder; and

"(ii) includes the capability to remotely—

"(I) delete or render inaccessible from the smartphone all information relating to the account holder that has been placed on the smartphone;

"(II) render the smartphone inoperable on the network of any provider of commercial mobile service or commercial mobile data service globally;

"(III) prevent the smartphone from being reactivated or reprogrammed without a passcode or similar authorization after the smartphone has been—

"(aa) rendered inoperable as described in subclause (II); or

"(bb) subject to an unauthorized factory reset; and

"(IV) restore personal information from the smartphone onto a compatible or interoperable device.

"(2) DEVICE STANDARDS.—A person may not manufacture in the United States, or import into the United States for sale or resale to the public, a smartphone unless the smartphone is configured in such a manner that the provider of commercial mobile service or commercial mobile data service on the smartphone is able to comply with the requirements under paragraph (1).

"(3) EXEMPTIONS FOR FUNCTIONALLY EQUIVALENT TECHNOLOGY.—

"(A) MOBILE SERVICE PROVIDERS.—The Commission may exempt a provider of commercial mobile service or commercial mobile data service on a smartphone, and the manufacturer of, and provider of the operating system for, the smartphone, from the requirement under paragraph (1) with respect to that smartphone if the service provider, in coordination with the manufacturer and operating system provider, makes available on the smartphone technology that accomplishes the functional equivalent of the function, initial prompt, and ability to opt out required under paragraph (1)(A).

"(B) MANUFACTURERS AND IMPORTERS.—The Commission may exempt a person from the

requirement under paragraph (2)(A), with respect to a smartphone that the person manufactures in the United States or imports into the United States for sale or resale to the public, if the smartphone is configured in such a manner that the provider of commercial mobile service or commercial mobile data service on the smartphone may make available on the smartphone technology that accomplishes the functional equivalent of the function, initial prompt, and ability to opt out required under paragraph (1)(A).

"(c) NO FEE.—A provider of commercial mobile service or commercial mobile data service on a smartphone may not charge the account holder any fee for making the function, initial prompt, and ability to opt out required under subsection (b)(1)(A), or any equivalent technology described in subsection (b)(3)(A), available to the account holder.

"(d) FORFEITURE PENALTY.—

"(1) IN GENERAL.—Any person that is determined by the Commission, in accordance with paragraphs (3) and (4) of section 503(b), to have violated subsection (b) or (c) of this section, including a manufacturer or operating system provider that

violates the requirement to coordinate with a service provider under subsection (b)(1)(A), shall be liable to the United States for a forfeiture penalty, in an amount to be determined by the Commission.

"(2) OTHER PENALTIES.—A forfeiture penalty under this subsection shall be in addition to any other penalty provided for in this Act.

"(e) COMMON NATIONAL FRAMEWORK.—The Commission shall establish a common national framework for smartphone anti-theft measures that takes into consideration the interest of all stakeholders for the purpose of promoting national uniformity of the function, initial prompt, and ability to opt out required under subsection (b)(1)(A), or functionally equivalent technology described in subsection (b)(3)(A), to protect consumers from the theft of smartphones.

"(f) TABLETS.—

"(1) COMMISSION DETERMINATION.—Not later than 180 days after the date of enactment of the Smartphone Theft Prevention Act of 2015, the Commission shall determine whether this section should apply with respect to tablets on which commercial mobile service or commercial mobile data service is provided.

"(2) REGULATIONS.—If the Commission determines that this section should apply with respect to tablets described in paragraph (1), the Commission shall promulgate regulations to implement that determination.

"(g) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to prohibit a manufacturer of smartphones, or a provider of commercial mobile service or commercial mobile data service, from taking actions not described in this section to protect consumers from the theft of smartphones.

"(h) RELATIONSHIP TO STATE LAW.—Nothing in this section shall be construed to preempt any provision of State law that provides protections to users of smartphones (or tablets, if applicable) that are at least as strong as the protections provided under this section.".

(b) APPLICABILITY OF FUNCTION REQUIREMENT.—

(1) DEFINITION.—In this subsection, the term "smartphone" has the meaning given the term in section 343 of the Communications Act of 1934, as added by subsection (a).

(2) APPLICABILITY.—Except as provided in paragraph (3), section 343 of the Communications Act of 1934, as added by subsection (a), shall apply

with respect to any smartphone that, on or after January 1, 2016, is—

(A) manufactured in the United States; or

(B) imported into the United States for sale to the public.

(3) COMPLIANCE EXTENSIONS.—The Federal Communications Commission may exempt a person that is subject to any requirement under section 343(b) of the Communications Act of 1934, as added by subsection (a), from that requirement for a temporary period after the date described in paragraph (2) of this subsection, upon a showing by the person that the person requires more time to be able to comply with the requirement.

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