

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—113th Cong., 2d Sess.

S. 517

To promote consumer choice and wireless competition by permitting consumers to unlock mobile wireless devices, and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by Mr. LEAHY (for himself and Mr. GRASSLEY)

Viz:

1 Strike all after the enacting clause and insert the following:
2

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Unlocking Consumer
5 Choice and Wireless Competition Act”.

6 **SEC. 2. REPEAL OF EXISTING RULE AND ADDITIONAL
7 RULEMAKING BY LIBRARIAN OF CONGRESS.**

8 (a) REPEAL AND REPLACE.—As of the date of the
9 enactment of this Act, paragraph (3) of section 201.40(b)
10 of title 37, Code of Federal Regulations, as amended and
11 revised by the Librarian of Congress on October 28, 2012,

1 pursuant to the Librarian's authority under section
2 1201(a) of title 17, United States Code, shall have no
3 force and effect, and such paragraph shall read, and shall
4 be in effect, as such paragraph was in effect on July 27,
5 2010.

6 (b) RULEMAKING.—The Librarian of Congress, upon
7 the recommendation of the Register of Copyrights, who
8 shall consult with the Assistant Secretary for Communica-
9 tions and Information of the Department of Commerce
10 and report and comment on his or her views in making
11 such recommendation, shall determine, consistent with the
12 requirements set forth under section 1201(a)(1) of title
13 17, United States Code, whether to extend the exemption
14 for the class of works described in section 201.40(b)(3)
15 of title 37, Code of Federal Regulations, as amended by
16 subsection (a), to include any other category of wireless
17 devices in addition to wireless telephone handsets. The de-
18 termination shall be made in the first rulemaking under
19 section 1201(a)(1)(C) of title 17, United States Code, that
20 begins on or after the date of enactment of this Act.

21 (c) UNLOCKING AT DIRECTION OF OWNER.—Cir-
22 cumvention of a technological measure that restricts wire-
23 less telephone handsets or other wireless devices from con-
24 necting to a wireless telecommunications network—

1 (1)(A) as authorized by paragraph (3) of sec-
2 tion 201.40(b) of title 37, Code of Federal Regula-
3 tions, as made effective by subsection (a); and

4 (B) as may be extended to other wireless de-
5 vices pursuant to a determination in the rulemaking
6 conducted under subsection (b); or

7 (2) as authorized by an exemption adopted by
8 the Librarian of Congress pursuant to a determina-
9 tion made on or after the date of enactment of this
10 Act under section 1201(a)(1)(C) of title 17, United
11 States Code,

12 may be initiated by the owner of any such handset or other
13 device, by another person at the direction of the owner,
14 or by a provider of a commercial mobile radio service or
15 a commercial mobile data service at the direction of such
16 owner or other person, solely in order to enable such owner
17 or a family member of such owner to connect to a wireless
18 telecommunications network, when such connection is au-
19 thorized by the operator of such network.

20 (d) RULE OF CONSTRUCTION.—

21 (1) IN GENERAL.—Except as expressly provided
22 herein, nothing in this Act shall be construed to
23 alter the scope of any party's rights under existing
24 law.

1 (2) LIBRARIAN OF CONGRESS.—Nothing in this
2 Act alters, or shall be construed to alter, the author-
3 ity of the Librarian of Congress under section
4 1201(a)(1) of title 17, United States Code.

5 (e) DEFINITIONS.—In this Act:

6 (1) COMMERCIAL MOBILE DATA SERVICE; COM-
7 Mercial MOBILE RADIO SERVICE.—The terms
8 “commercial mobile data service” and “commercial
9 mobile radio service” have the respective meanings
10 given those terms in section 20.3 of title 47, Code
11 of Federal Regulations, as in effect on the date of
12 the enactment of this Act.

13 (2) WIRELESS TELECOMMUNICATIONS NET-
14 WORK.—The term “wireless telecommunications net-
15 work” means a network used to provide a commer-
16 cial mobile radio service or a commercial mobile data
17 service.

18 (3) WIRELESS TELEPHONE HANDSETS; WIRE-
19 LESS DEVICES.—The terms “wireless telephone
20 handset” and “wireless device” mean a handset or
21 other device that operates on a wireless tele-
22 communications network.