

Calendar No. \_\_\_\_\_

113TH CONGRESS  
2D SESSION**S. 517****[Report No. 113-\_\_\_\_\_]**

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

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IN THE SENATE OF THE UNITED STATES

MARCH 11, 2013

Mr. LEAHY (for himself, Mr. GRASSLEY, Mr. FRANKEN, Mr. HATCH, Mr. LEE, and Ms. KLOBUCHAR) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

\_\_\_\_\_ (legislative day, \_\_\_\_\_), \_\_\_\_\_

Reported by Mr. LEAHY, with an amendment

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

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**A BILL**

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

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 “Unlocking Consumer  
5 Choice and Wireless Competition Act”.

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

3 (a) **REPEAL AND REPLACE.**—Paragraph (3) of sec-  
4 tion 201.40(b) of title 37, Code of Federal Regulations,  
5 as amended and revised by the Librarian of Congress on  
6 October 28, 2012, pursuant to his authority under section  
7 1201(a) of title 17, United States Code, shall have no  
8 force and effect, and such paragraph shall read, and shall  
9 be in effect, as such paragraph was in effect on July 27,  
10 2010.

11 (b) **RULEMAKING.**—Not later than 1 year after the  
12 date of enactment of this Act, the Librarian of Congress,  
13 upon the recommendation of the Register of Copyrights,  
14 who shall consult with the Assistant Secretary for Commu-  
15 nications and Information of the Department of Com-  
16 merce and report and comment on his or her views in mak-  
17 ing such recommendation, shall determine, consistent with  
18 the requirements set forth under section 1201(a)(1) of  
19 title 17, United States Code, whether to extend the exemp-  
20 tion for the class of works described in section  
21 201.40(b)(3) of title 37, Code of Federal Regulations, as  
22 amended by subsection (a), to include any other category  
23 of wireless devices in addition to wireless telephone  
24 handsets.

25 (c) **RULE OF CONSTRUCTION.**—Nothing in this Act  
26 alters, or shall be construed to alter, the authority of the

1 Librarian of Congress under section ~~1201(a)(1)~~ of title  
2 17, United States Code.

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 RULE-**  
7 **MAKING BY LIBRARIAN OF CONGRESS.**

8 (a) *REPEAL AND REPLACE.*—As of the date of the en-  
9 actment of this Act, paragraph (3) of section 201.40(b) of  
10 title 37, Code of Federal Regulations, as amended and re-  
11 vised by the Librarian of Congress on October 28, 2012,  
12 pursuant to the Librarian’s authority under section  
13 1201(a) of title 17, United States Code, shall have no force  
14 and effect, and such paragraph shall read, and shall be in  
15 effect, as such paragraph was in effect on July 27, 2010.

16 (b) *RULEMAKING.*—The Librarian of Congress, upon  
17 the recommendation of the Register of Copyrights, who shall  
18 consult with the Assistant Secretary for Communications  
19 and Information of the Department of Commerce and re-  
20 port and comment on his or her views in making such rec-  
21 ommendation, shall determine, consistent with the require-  
22 ments set forth under section 1201(a)(1) of title 17, United  
23 States Code, whether to extend the exemption for the class  
24 of works described in section 201.40(b)(3) of title 37, Code  
25 of Federal Regulations, as amended by subsection (a), to

1 *include any other category of wireless devices in addition*  
2 *to wireless telephone handsets. The determination shall be*  
3 *made in the first rulemaking under section 1201(a)(1)(C)*  
4 *of title 17, United States Code, that begins on or after the*  
5 *date of enactment of this Act.*

6 (c) *UNLOCKING AT DIRECTION OF OWNER.—Cir-*  
7 *cumvention of a technological measure that restricts wire-*  
8 *less telephone handsets or other wireless devices from con-*  
9 *necting to a wireless telecommunications network—*

10 (1)(A) *as authorized by paragraph (3) of section*  
11 *201.40(b) of title 37, Code of Federal Regulations, as*  
12 *made effective by subsection (a); and*

13 (B) *as may be extended to other wireless devices*  
14 *pursuant to a determination in the rulemaking con-*  
15 *ducted under subsection (b); or*

16 (2) *as authorized by an exemption adopted by*  
17 *the Librarian of Congress pursuant to a determina-*  
18 *tion made on or after the date of enactment of this*  
19 *Act under section 1201(a)(1)(C) of title 17, United*  
20 *States Code,*

21 *may be initiated by the owner of any such handset or other*  
22 *device, by another person at the direction of the owner, or*  
23 *by a provider of a commercial mobile radio service or a*  
24 *commercial mobile data service at the direction of such*  
25 *owner or other person, solely in order to enable such owner*

1 *or a family member of such owner to connect to a wireless*  
2 *telecommunications network, when such connection is au-*  
3 *thorized by the operator of such network.*

4 *(d) RULE OF CONSTRUCTION.—*

5 *(1) IN GENERAL.—Except as expressly provided*  
6 *herein, nothing in this Act shall be construed to alter*  
7 *the scope of any party’s rights under existing law.*

8 *(2) LIBRARIAN OF CONGRESS.—Nothing in this*  
9 *Act alters, or shall be construed to alter, the authority*  
10 *of the Librarian of Congress under section 1201(a)(1)*  
11 *of title 17, United States Code.*

12 *(e) DEFINITIONS.—In this Act:*

13 *(1) COMMERCIAL MOBILE DATA SERVICE; COM-*  
14 *MERCIAL MOBILE RADIO SERVICE.—The terms “com-*  
15 *mercial mobile data service” and “commercial mobile*  
16 *radio service” have the respective meanings given*  
17 *those terms in section 20.3 of title 47, Code of Federal*  
18 *Regulations, as in effect on the date of the enactment*  
19 *of this Act.*

20 *(2) WIRELESS TELECOMMUNICATIONS NET-*  
21 *WORK.—The term “wireless telecommunications net-*  
22 *work” means a network used to provide a commercial*  
23 *mobile radio service or a commercial mobile data*  
24 *service.*

1           (3) *WIRELESS TELEPHONE HANDSETS; WIRE-*  
2           *LESS DEVICES.—The terms “wireless telephone*  
3           *handset” and “wireless device” mean a handset or*  
4           *other device that operates on a wireless telecommuni-*  
5           *cations network.*