

S.517 Unlocking Consumer Choice and Wireless Competition Act *Restoring Consumers' Ability to Take Used Phones To Their Chosen Network*

S.517 restores an exemption to the Digital Millennium Copyright Act (DMCA) that allows consumers to “unlock” their used cell phones to use on their preferred wireless network consistent with the terms of their contracts. By making clear that the law does not prevent consumers from taking their phones to their chosen network, the bill increases consumer choice and promotes competition in the wireless market.

Restoring the Library of Congress’s former exemption so that consumers may unlock their phones consistent with their contracts. Once every three years, the Library of Congress undertakes a rulemaking under 17 U.S.C. 1201(a) to establish exemptions to the DMCA’s prohibition on circumventing technological measures that control access to copyrighted works. From 2006 to 2012, the Library granted an exemption for cell phone unlocking that allowed users to change wireless providers after complying with their contracts. In its 2012 rulemaking, the Library did not recognize an exemption for new cell phones purchased after January 26, 2013. The Library’s decision prompted a strong public reaction: a petition on the White House website opposing the Library’s decision garnered over 110,000 signatures. Senators Leahy, Grassley, and others introduced bipartisan legislation to address this issue in March 2013 (S.517), and the House passed its own version in February 2014 (H.R. 1123). S.517 was reported out of the Judiciary Committee with a bipartisan Managers’ amendment by voice vote on July 10, 2014, approved by the full Senate on July 15, 2014, and approved by the House on July 25, 2014.

Allowing consumers to obtain help in unlocking their phones. In addition to reinstating the Library of Congress’s prior exemption authorizing cell phone unlocking in certain cases, S.517 ensures that consumers who lack the technological savvy to unlock their phones themselves can authorize others to do the unlocking for them. The involvement of such third parties is limited to unlocking phones to allow owners or their family members to connect to their chosen wireless network.

Instructing the Library of Congress to determine whether other wireless devices should be eligible for unlocking. Other wireless devices, such as tablets, are of increasing importance to consumers. In recognition of that growing importance and the potential for consumer harm if used tablets cannot be taken to a new network, S.517 directs the Librarian of Congress to determine whether such devices should also be unlockable. That determination will be part of the Librarian’s next triennial rulemaking under the DMCA, which is set to begin later this year.

Otherwise preserving the status quo. S.517 addresses the specific question of permitting consumers to unlock their cell phones to use on their chosen wireless network consistent with the terms of their contract. The legislation creates no new obligations for cell phone manufacturers or wireless carriers, such as how a carrier may choose to process unlocking requests or provide unlocking codes. While there are larger ongoing debates about Section 1201 of the DMCA, as well as other aspects of phone unlocking, those issues are not addressed by the bill. The bill takes a narrow, targeted approach to protect consumer choice and promote competition in the wireless industry.

S.517 is supported by a wide range of consumer groups and wireless carriers, including CTIA-The Wireless Association, Competitive Carriers Association, Public Knowledge, and Consumers Union.