

KELSEY SMITH ACT

MAY 23, 2016.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. UPTON, from the Committee on Energy and Commerce, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 4889]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 4889) to amend the Communications Act of 1934 to require providers of a covered service to provide call location information concerning the telecommunications device of a user of such service to an investigative or law enforcement officer in an emergency situation involving risk of death or serious physical injury or in order to respond to the user's call for emergency services, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Kelsey Smith Act”.

SEC. 2. REQUIRED EMERGENCY DISCLOSURE OF CALL LOCATION INFORMATION TO LAW ENFORCEMENT.

Section 222 of the Communications Act of 1934 (47 U.S.C. 222) is amended—

(1) in subsection (d)—

(A) in paragraph (4), by redesignating subparagraphs (A) through (C) as clauses (i) through (iii), respectively;

(B) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively;

(C) by striking “Nothing in this section” and inserting the following:

“(1) PERMITTED DISCLOSURES.—Nothing in this section”; and

(D) by adding at the end the following:

“(2) REQUIRED EMERGENCY DISCLOSURE OF CALL LOCATION INFORMATION TO LAW ENFORCEMENT.—Notwithstanding subsections (a), (b), and (c), at the request of an investigative or law enforcement officer, a provider of a covered service shall provide to such officer the call location information, or the best available location information, of a telecommunications device that is—

“(A) used to place a 9–1–1 call requesting emergency assistance; or

“(B) reasonably believed to be in the possession of an individual that the law enforcement officer reasonably believes is in an emergency situation that involves the risk of death or serious physical harm to the individual.

“(3) HOLD HARMLESS.—No cause of action shall lie in any court nor shall any civil or administrative proceeding be commenced by a governmental entity against any provider of a covered service, or its directors, officers, employees, agents, or vendors, for providing in good faith call location information or other information, facilities, or assistance in accordance with paragraph (2) and any regulations promulgated under such paragraph.”;

(2) in subsection (f)(1), by striking “subsection (d)(4)” and inserting “subsection (d)(1)(D)”; and

(3) in subsection (h), by adding at the end the following:

“(8) COVERED SERVICE.—The term ‘covered service’ means—

“(A) a commercial mobile service (as defined in section 332); or

“(B) an IP-enabled voice service (as defined in section 7 of the Wireless Communications and Public Safety Act of 1999 (47 U.S.C. 615b)).

“(9) INVESTIGATIVE OR LAW ENFORCEMENT OFFICER.—The term ‘investigative or law enforcement officer’ has the meaning given such term in section 2510 of title 18, United States Code.”.

PURPOSE AND SUMMARY

H.R. 4889, Kelsey Smith Act, requires providers of a certain wireless services to provide call location information for the device of a person that law enforcement believes to be in an emergency situation with a risk of death or serious physical injury.

BACKGROUND AND NEED FOR LEGISLATION

When a cell phone connects to or communicates with the network, whether to make a call, download data, or even receive a push notification or background update, the cell provider notes the approximate location using the closest cell tower and the device’s proximity to that tower. Current federal law permits telecommunications carriers to use, disclose, or permit access by emergency personnel to call location information for users of their service in order

to respond to a call for emergency services.¹ In addition, it permits carriers to provide location information to the user's legal guardian or immediate family when there is an emergency situation with risk of death or serious physical harm.² However, federal law does not compel disclosure of that information to law enforcement, leaving the decision whether to disclose to the discretion of the carrier.

In 2007, Kelsey Smith was abducted from a Target parking lot in Kansas in broad daylight while shopping for a birthday gift for her boyfriend. She was 18 years old, and just nine days past her high school graduation, preparing to attend college in the fall. While the search for her began immediately, law enforcement encountered difficulty in obtaining location information from her cell phone provider. Because the service provider did not have clear legal guidance for the appropriate course of action, the provider spent a great deal of time considering the various legal implications of divulging that information. It eventually required a subpoena to obtain the information. After four days of searching, law enforcement located her body within 45 minutes of receiving the device location data. Kelsey had been sexually assaulted and murdered, her body left in the woods. Following her death, Kelsey's parents became committed to ensuring that no other family would endure this unnecessary delay and prolonged agony of waiting. As Kelsey's mother, Melissa Smith, testified before the Subcommittee on Communications and Technology, perhaps Kelsey laid in the woods for four days because the law needed to change.

This legislation would allow law enforcement to access location data more quickly in order to better react to emergencies and locate and save potential victims more quickly. Commercial mobile service providers would be required to provide call location information to law enforcement when the device has been used to call 9-1-1 for emergency assistance, or for a device that is in the possession of a user that law enforcement believes to be in an emergency situation involving risk of death or serious physical harm. In addition, the legislation limits the liability for carriers that, in good faith, are compelled to provide location data in compliance with the law.

To date, similar legislation has passed in 22 states.³ The state versions of the Kelsey Smith Act have already helped to save lives, including a case in Kelsey Smith's home state of Kansas where a vehicle was stolen from an ATM with a baby in the backseat. By tracking the device that remained in the car, police were able to locate the vehicle within 45 minutes of the crime, and the baby was recovered, unharmed. In instances like this, every second counts, and any delay while seeking a warrant or sworn statement could mean the difference between whether a victim is found dead or alive.

The Kelsey Smith Act is silent as to how state and local law enforcement may exercise the powers granted by this Act. As employees and political subdivisions of the states, law enforcement must abide by the policies and procedures established within their states that govern their conduct. The Kelsey Smith Act establishes an ob-

¹ 47 U.S.C. 222(d)(4)(A).

² 47 U.S.C. 222(d)(4)(B).

³ <http://kelseysarmy.org/#ks-act>.

ligation on wireless carriers; how and when law enforcement avails itself of the tools provided in this Act are matters of state law.

HEARINGS

On April 13, 2016, the Subcommittee on Communications and Technology held a hearing on H.R. 4889. The Subcommittee received testimony from:

- Melissa Smith, mother of Kelsey Smith, Treasurer, Kelsey Smith Foundation.

COMMITTEE CONSIDERATION

Representative Yoder introduced H.R. 4889 on March 23, 2016.

On April 18 and 19, 2016, the Subcommittee on Communications and Technology met in open markup session. Chairman Walden offered an amendment incorporating liability protection for covered providers who provided location data in compliance with the Act. The amendment was accepted by voice vote. The Subcommittee forwarded H.R. 4889 as amended, to the full Committee by a voice vote.

On April 26, 27, and 28, 2016, the full Committee on Energy and Commerce met in open markup session, where Subcommittee Chairman Walden offered an amendment making clarifying changes to the liability language. The amendment was adopted, and the Committee ordered H.R. 4889 reported to the House, as amended, by a voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. No recorded votes were taken on this legislation.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a hearing and made findings that are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goal and objective of H.R. 4889 is to ensure that providers of certain wireless services provide location data to law enforcement when there is an emergency that involves risk of death or serious physical harm.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 4889 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

EARMARK, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives, the Committee finds that H.R. 4889 contains no earmarks, limited tax benefits, or limited tariff benefits.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 20, 2016.

Hon. FRED UPTON,
*Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4889, the Kelsey Smith Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Kathleen Gramp.

Sincerely,

ROBERT A. SUNSHINE
(For Keith Hall, Director).

Enclosure.

H.R. 4889—Kelsey Smith Act

H.R. 4889 would require telecommunications providers, upon request, to share data about the location of a call placed from a mobile phone or through an Internet voice service under certain circumstances. Under the bill, such requests for location information could only be made by a law enforcement officer who is responding to an emergency call or an emergency situation where a person is in serious physical danger. Furthermore, governmental entities would not be allowed to pursue civil or administrative actions against entities or individuals that provide such information in good faith.

Based on information from the Federal Communications Commission (FCC), CBO estimates that the regulatory activities necessary to implement H.R. 4889 would have no significant effect on the agency's workload or costs. Moreover, under current law, the FCC is authorized to collect fees sufficient to offset the cost of its regulatory activities each year. Therefore, CBO estimates that the net cost to implement H.R. 4889 would be negligible, assuming annual appropriation actions consistent with the agency's authorities.

Because enacting H.R. 4889 would not affect direct spending or revenues, pay-as-you-go procedures do not apply. CBO estimates that enacting H.R. 4889 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

H.R. 4889 would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) by prohibiting public entities from initiating civil or administrative proceedings against service providers that relay requested information and other assistance. CBO estimates that the cost, if any, for public entities to comply with the mandate would be minimal and well below the annual threshold established in UMRA (\$77 million in 2016, adjusted annually for inflation).

H.R. 4889 would impose a private-sector mandate as defined in UMRA by requiring telecommunications providers to share the location of cell phones in emergency situations. Currently, telecommunications providers supply cell phone location data upon request when certain internal criteria of the providers are met or when law enforcement officials present a warrant for the information. This bill would require telecommunications providers to supply the call location data immediately at the request of law enforcement officials when the cell phone has been used to place a 9–1–1 call requesting emergency assistance, or when the cell phone is believed to be in the possession of someone law enforcement believes is in a serious emergency situation. Because telecommunications companies already frequently supply location information to law enforcement officials, the incremental cost of the mandate would be small.

In addition, the bill would prohibit plaintiffs from filing a civil action against telecommunication providers for supplying location information in compliance with the bill. By eliminating an existing right to seek compensation for damages, the bill would impose a private-sector mandate. The cost of the mandate would be the forgone net value of awards and settlements that would have been awarded for such claims in the absence of the bill. A search of the available literature suggests that few of those specific types of lawsuits have been brought against providers under current law, and that most cases involving the release of location information have been brought against the government or government officials. Although there is some uncertainty about the number of claims against telecommunications providers that would be successful and about the value of awards or settlements in those cases, because of the narrow scope of the cases involved CBO expects that the costs in any one year would probably fall below the annual threshold established in UMRA for private-sector mandates (\$154 million, in 2016, adjusted annually for inflation).

The CBO staff contacts for this estimate are Kathleen Gramp (for federal costs), Rachel Austin (for state and local mandates), and Logan Smith (for private-sector mandates). The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director of Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 4889 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that enacting H.R. 4889 does not direct any rule making within the meaning of 5 U.S.C. 551, as specified in Section 2(a).

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 provides that the Act may be cited as the “Kelsey Smith Act.”

Section 2. Required emergency disclosure of call location information to law enforcement

Section 2 amends Section 222 of the Communications Act of 1934 by adding a new subsection (d)(2) that requires covered service providers to provide location data or call location information to law enforcement officers at their request for the device of a user that law enforcement believes to be in an emergency situation that involves the risk of death or serious physical harm, or when the device was used to place a call to 9–1–1 requesting emergency assistance.

The narrow scope of the legislation is intended to prevent abuse or overreach. By limiting it to true emergency situations where a victim is at risk of death or serious injury, law enforcement cannot use the law to obtain location information for routine, non-emergency investigations or for any other purpose. In addition, the Act only grants access to call location information and triangulated location data—the legislation would not allow law enforcement to obtain call history, any data on the device, texts or emails from the device owner, or any other information connected to the device.

This legislation is intended to only address the specific situation of providing law enforcement with a tool to locate a device and presumably the user. Moreover, the legislation establishes an obligation on wireless carriers; how and when law enforcement avails itself of the tools provided in this Act are matters of state law.

In addition, the legislation states that there shall be no cause of action against any provider of a covered service that provides, in good faith, location information in accordance with this Act. This hold harmless language helps to protect the carriers from liability so long as they are in compliance with the Act, and further takes the decision making out of the hands of service providers and places it with law enforcement. Given the unique skill sets of law enforcement for making determinations as to what constitutes an emergency, it is appropriate that they are tasked with this responsibility.

The Act defines “covered service” as a commercial mobile service, or an IP enabled voice service. The Act also defines “investigative or law enforcement officer” through cross-reference to section 2510 of title 18 of the U.S. Code.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, 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 matter is printed in italic, and existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934

* * * * *

TITLE II—COMMON CARRIERS

PART I—COMMON CARRIER REGULATION

* * * * *

SEC. 222. PRIVACY OF CUSTOMER INFORMATION.

(a) **IN GENERAL.**—Every telecommunications carrier has a duty to protect the confidentiality of proprietary information of, and relating to, other telecommunication carriers, equipment manufacturers, and customers, including telecommunication carriers reselling telecommunications services provided by a telecommunications carrier.

(b) **CONFIDENTIALITY OF CARRIER INFORMATION.**—A telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service shall use such information only for such purpose, and shall not use such information for its own marketing efforts.

(c) **CONFIDENTIALITY OF CUSTOMER PROPRIETARY NETWORK INFORMATION.**—

(1) **PRIVACY REQUIREMENTS FOR TELECOMMUNICATIONS CARRIERS.**—Except as required by law or with the approval of the customer, a telecommunications carrier that receives or obtains customer proprietary network information by virtue of its pro-

vision of a telecommunications service shall only use, disclose, or permit access to individually identifiable customer proprietary network information in its provision of (A) the telecommunications service from which such information is derived, or (B) services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories.

(2) **DISCLOSURE ON REQUEST BY CUSTOMERS.**—A telecommunications carrier shall disclose customer proprietary network information, upon affirmative written request by the customer, to any person designated by the customer.

(3) **AGGREGATE CUSTOMER INFORMATION.**—A telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of a telecommunications service may use, disclose, or permit access to aggregate customer information other than for the purposes described in paragraph (1). A local exchange carrier may use, disclose, or permit access to aggregate customer information other than for purposes described in paragraph (1) only if it provides such aggregate information to other carriers or persons on reasonable and nondiscriminatory terms and conditions upon reasonable request therefor.

(d) **EXCEPTIONS.**—

(1) **PERMITTED DISCLOSURES.**—Nothing in this section prohibits a telecommunications carrier from using, disclosing, or permitting access to customer proprietary network information obtained from its customers, either directly or indirectly through its agents—

[(1)] (A) to initiate, render, bill, and collect for telecommunications services;

[(2)] (B) to protect the rights or property of the carrier, or to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services;

[(3)] (C) to provide any inbound telemarketing, referral, or administrative services to the customer for the duration of the call, if such call was initiated by the customer and the customer approves of the use of such information to provide such service; and

[(4)] (D) to provide call location information concerning the user of a commercial mobile service (as such term is defined in section 332(d)) or the user of an IP-enabled voice service (as such term is defined in section 7 of the Wireless Communications and Public Safety Act of 1999 (47 U.S.C. 615b))—

[(A)] (i) to a public safety answering point, emergency medical service provider or emergency dispatch provider, public safety, fire service, or law enforcement official, or hospital emergency or trauma care facility, in order to respond to the user's call for emergency services;

[(B)] (ii) to inform the user's legal guardian or members of the user's immediate family of the user's location in an emergency situation that involves the risk of death or serious physical harm; or

[(C)] (iii) to providers of information or database management services solely for purposes of assisting in the delivery of emergency services in response to an emergency.

(2) *REQUIRED EMERGENCY DISCLOSURE OF CALL LOCATION INFORMATION TO LAW ENFORCEMENT.*—Notwithstanding subsections (a), (b), and (c), at the request of an investigative or law enforcement officer, a provider of a covered service shall provide to such officer the call location information, or the best available location information, of a telecommunications device that is—

(A) used to place a 9-1-1 call requesting emergency assistance; or

(B) reasonably believed to be in the possession of an individual that the law enforcement officer reasonably believes is in an emergency situation that involves the risk of death or serious physical harm to the individual.

(3) *HOLD HARMLESS.*—No cause of action shall lie in any court nor shall any civil or administrative proceeding be commenced by a governmental entity against any provider of a covered service, or its directors, officers, employees, agents, or vendors, for providing in good faith call location information or other information, facilities, or assistance in accordance with paragraph (2) and any regulations promulgated under such paragraph.

(e) *SUBSCRIBER LIST INFORMATION.*—Notwithstanding subsections (b), (c), and (d), a telecommunications carrier that provides telephone exchange service shall provide subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format.

(f) *AUTHORITY TO USE LOCATION INFORMATION.*—For purposes of subsection (c)(1), without the express prior authorization of the customer, a customer shall not be considered to have approved the use or disclosure of or access to—

(1) call location information concerning the user of a commercial mobile service (as such term is defined in section 332(d)) or the user of an IP-enabled voice service (as such term is defined in section 7 of the Wireless Communications and Public Safety Act of 1999 (47 U.S.C. 615b)), other than in accordance with [(subsection (d)(4))] *subsection (d)(1)(D)*; or

(2) automatic crash notification information to any person other than for use in the operation of an automatic crash notification system.

(g) *SUBSCRIBER LISTED AND UNLISTED INFORMATION FOR EMERGENCY SERVICES.*—Notwithstanding subsections (b), (c), and (d), a telecommunications carrier that provides telephone exchange service or a provider of IP-enabled voice service (as such term is defined in section 7 of the Wireless Communications and Public Safety Act of 1999 (47 U.S.C. 615b)) shall provide information described in subsection (i)(3)(A) (including information pertaining to subscribers whose information is unlisted or unpublished) that is in its possession or control (including information pertaining to subscribers of other carriers) on a timely and unbundled basis, under

nondiscriminatory and reasonable rates, terms, and conditions to providers of emergency services, and providers of emergency support services, solely for purposes of delivering or assisting in the delivery of emergency services.

(h) DEFINITIONS.—As used in this section:

(1) CUSTOMER PROPRIETARY NETWORK INFORMATION.—The term “customer proprietary network information” means—

(A) information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and

(B) information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier;

except that such term does not include subscriber list information.

(2) AGGREGATE INFORMATION.—The term “aggregate customer information” means collective data that relates to a group or category of services or customers, from which individual customer identities and characteristics have been removed.

(3) SUBSCRIBER LIST INFORMATION.—The term “subscriber list information” means any information—

(A) identifying the listed names of subscribers of a carrier and such subscribers’ telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses, or classifications; and

(B) that the carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format.

(4) PUBLIC SAFETY ANSWERING POINT.—The term “public safety answering point” means a facility that has been designated to receive emergency calls and route them to emergency service personnel.

(5) EMERGENCY SERVICES.—The term “emergency services” means 9–1–1 emergency services and emergency notification services.

(6) EMERGENCY NOTIFICATION SERVICES.—The term “emergency notification services” means services that notify the public of an emergency.

(7) EMERGENCY SUPPORT SERVICES.—The term “emergency support services” means information or data base management services used in support of emergency services.

(8) COVERED SERVICE.—The term “covered service” means—

(A) a commercial mobile service (as defined in section 332); or

(B) an IP-enabled voice service (as defined in section 7 of the Wireless Communications and Public Safety Act of 1999 (47 U.S.C. 615b)).

(9) INVESTIGATIVE OR LAW ENFORCEMENT OFFICER.—The term “investigative or law enforcement officer” has the meaning given such term in section 2510 of title 18, United States Code.

* * * * *

MINORITY VIEWS

Democrats and Republicans agree that in emergency situations, law enforcement should have quick access to the information necessary to save lives. Democrats also believe, however, that new powers granted to law enforcement should also be accompanied by key public safeguards and privacy protections—especially if those protections will not slow down investigations. H.R. 4889, the “Kelsey Smith Act,” would require wireless carriers to turn over the location data of individuals in certain emergency situations. This bill, however, does not include after-the-fact procedural checks that were part of a bipartisan agreement in the 113th Congress to help preserve the privacy of consumers without slowing the investigation.

BACKGROUND AND ANALYSIS

H.R. 4889 is named for Kelsey Ann Smith, who was abducted as she left a discount retail department store one evening in 2007. Law enforcement officials found Kelsey’s body four days later by using information obtained from her wireless carrier.¹ This bill was introduced by Rep. Kevin Yoder (R-KS) on March 23, 2016.

Rather than use the permissive standard contained in current law, H.R. 4889 would require wireless carriers to furnish to law enforcement officials the “best available location information” upon request. Specifically, wireless carriers would be required to turn over data for (i) a device used to make a 9-1-1 call or (ii) a device reasonably believed to be in the possession of an individual that law enforcement reasonably believes is in an emergency situation involving the risk of death or serious physical harm.

Presently under the Communications Act, wireless carriers may provide location data to a user’s family members during an “emergency situation that involves the risk of death or serious physical harm.”² In responding to a request, the wireless carrier must determine whether a given situation is an emergency that involves risk of death or serious bodily harm.³

At the time of Ms. Smith’s abduction, her wireless carrier did not have a policy detailing how to determine if an emergency permitted disclosure under the law.⁴ As a result, it took the carrier four days to turn over her cell phone’s location data to law enforcement. During the 113th Congress, the Committee on Energy and Commerce considered another version of the Kelsey Smith Act. Several Demo-

¹ *Mother of Murdered Teen Pushes for Law Forcing Cellphone Carriers to Release Life-Saving Information*, Fox News (Apr. 13, 2014) (online at <http://www.foxnews.com/politics/2013/04/13/mother-murdered-teen-pushes-for-law-mandating-cell-phone-carriers-to-release.html>).

² 47 U.S.C. 222(d)(4)(B).

³ *Id.*

⁴ *The Kelsey Smith Story—A Story Of Heartache & Hope*, Bryan Bentley, Plymouth-Canton Patch (May 21, 2014) (online at <http://patch.com/michigan/plymouth-mi/bp—the-kelsey-smith-story-a-story-of-heartache-hope>).

cratic members of the Committee and constitutional experts raised concerns that the version of the bill being considered risked violating consumers' privacy and Fourth Amendment rights. The Committee amended the bill to address some of these concerns while preserving law enforcement's expedited access to location data.

In the 113th Congress, the Committee adopted Democratic amendments that would require law enforcement to make a showing closer in line with the standard required under the Fourth Amendment only after a carrier was compelled to hand over a private citizen's location data.⁵ After accepting these amendments, the Committee favorably reported the bill. Even with these improvements, civil liberties groups continued to raise concerns that the amended bill could enable the government to exercise sweeping new powers to the detriment of personal privacy and contrary to the Fourth Amendment.⁶

Despite these continued criticisms, the version of the bill introduced by Rep. Yoder in this Congress omits even the specific protections that were adopted in the last Congress. Accordingly, the version of H.R. 4889 being considered in this Congress takes a step back from the bipartisan work done in the last Congress.

During open markup of H.R. 4889 before both the Subcommittee on Communications and Technology and the full Committee on Energy and Commerce, Democrats offered an amendment to H.R. 4889 to reflect the bipartisan work on the Kelsey Smith Act from the 113th Congress. That amendment would have included the key safeguards to protect the privacy of consumers while still meeting the public safety goals of the Act. The Majority was not interested in adding back even the safeguards they agreed to in the last Congress.

Democrats have always been willing to work in a bipartisan fashion to improve this bill. But these safeguards that protect consumer privacy are necessary before this bill can become law. Law enforcement can receive these new tools to make us safer without the public having to sacrifice basic civil rights.

FRANK PALLONE, JR.,
*Ranking Member, Committee
 on Energy and Commerce.*
 ANNA G. ESHOO,
*Ranking Member, Subcommittee
 on Communications
 and Technology.*

○

⁵H.R. 1575 (113th Cong.).

⁶See e.g., Letter from ACLU to Chairman Fred Upton and Ranking Member Henry A. Waxman, House Committee on Energy and Commerce (July 29, 2014).