

Calendar No. 702

114TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 114-392

SECURING ACCESS TO NETWORKS IN
DISASTERS ACT OF 2016

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 2997



DECEMBER 6, 2016.—Ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE

69-010

WASHINGTON : 2016

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

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DECEMBER 6, 2016.—Ordered to be printed

Mr. THUNE, from the Committee on Commerce, Science, and
Transportation, submitted the following

R E P O R T

[To accompany S. 2997]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2997) to direct the Federal Communications Commission to commence proceedings related to the resiliency of critical telecommunications networks during times of emergency, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of S. 2997 is to improve the availability of critical communications services for Americans during an emergency. The bill would ensure telephone, Internet, broadcasting, cable, and satellite television providers have access to facilities during an emergency in order to maintain and repair these essential communication services. The bill also would direct the Federal Communications Commission (FCC) to study the public safety benefits and technical feasibility of alternative means of contacting 9-1-1 services during times of emergency when mobile service is unavailable.

BACKGROUND AND NEEDS

During an emergency such as a natural disaster, severe storm, or act of terrorism, communications services can be disrupted. Such disruption can limit the ability of citizens to protect their lives and property, degrade critical 9-1-1 operations, limit the dissemination of timely information to the public, and impact the efforts of first responders.

The challenges of rapidly restoring essential communication services and the opportunity to improve their resiliency have received increased attention in recent years, including as a result of Hurricane Sandy in 2012. By some estimates, nearly 25 percent of cellular sites in the path of Hurricane Sandy were disabled.¹ In the counties hardest hit by that hurricane, more than half of the cellular sites were impaired. The impact of these outages varied among particular wireless providers and subscribers, as did the ability of providers to access damaged infrastructure to restore services.

Emergencies can still impact communications networks even in situations where those emergencies do not affect the infrastructure necessary for those communications services. For example, wireless networks can become overloaded with calls during an emergency, rendering them ineffective at connecting those calls and providing workable broadband access. Some have suggested that these limitations on wireless networks can be overcome through the use of WiFi networks, both open access networks and others made available and open in response to the emergency situation.²

In an attempt to address these issues, S. 2997 would ensure that communications providers are able to access their facilities during emergencies on the same basis as providers of electrical power, natural gas, and water and sewer services. Because some communications service disruption is likely unavoidable in major emergencies, the bill also would direct the FCC to study alternative means of contacting 9-1-1 when mobile service is unavailable. Further, S. 2997 would recognize the importance of cooperation and consumer education among and by wireless providers through a sense of Congress.

On April 27, 2016, the Nation's five largest wireless providers announced a voluntary initiative, called the "Wireless Network Resiliency Cooperative Framework," to develop and implement network resiliency, emergency preparation, and recovery initiatives to sustain wireless communications during and after emergencies.³ In committing to the framework, the providers agreed: to provide reasonable arrangements for roaming during emergencies when technically feasible; to foster mutual aid during emergencies; to enhance municipal preparedness and restoration; to increase consumer readiness and preparation; and to improve public awareness and stakeholder communications on service and restoration status by supporting the FCC making data regarding the total number of cell sites out of service, calculated consistent with established Disaster Information Reporting System practices, publicly available on the FCC's website.

¹ Testimony of Federal Communications Commission (FCC) Chairman Julius Genachowski, Superstorm Sandy FCC Field Hearing, New York, NY, and Hoboken, NJ, February 5, 2013, at <http://transition.fcc.gov/Daily—Releases/Daily—Business/2013/db0205/DOC-318754A1.pdf>.

² FCC, *Notice of proposed rulemaking 13-125*, September 27, 2013, at <https://apps.fcc.gov/edocs—public/attachmatch/FCC-13-125A1—Rcd.pdf>.

³ Cellular Telephone Industries Association (CTIA), "CTIA & Pallone Announce 'Wireless Network Resiliency Cooperative Framework' for Disasters and Emergencies," April 27, 2016, at <http://www.ctia.org/resource-library/press-releases/archive/wireless-network-resiliency-cooperative-framework>.

LEGISLATIVE HISTORY

On May 26, 2016, Senator Cantwell introduced S. 2997 with Senators Booker and Schumer as original cosponsors. Senators Nelson, Rubio, and Thune are additional cosponsors.

On June 29, 2016, the Committee held an Executive Session during which S. 2997 was considered. The bill was approved unanimously by voice vote and was ordered to be reported favorably, as amended by Senators Cantwell, Booker, Schumer, and Nelson, with an amendment (in the nature of a substitute).

Similar legislation, H.R. 3998, was introduced by Representative Frank Pallone on November 16, 2015, in the House of Representatives. A legislative hearing on that bill was held by the Subcommittee on Communications and Technology of the Committee on Energy and Commerce of the House of Representatives on April 13, 2016. On April 28, 2016, the Committee on Energy and Commerce ordered H.R. 3998 reported, as amended, by voice vote. The House of Representatives passed that bill on May 23, 2016, by a vote of 389 to 2.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

S. 2997—Securing Access to Networks in Disasters Act of 2016

S. 2997 would direct the Federal Communications Commission (FCC) to study ways to enhance access to telecommunications services during emergencies when mobile service is unavailable. The bill also would redefine the term “essential service provider” to explicitly include certain telecommunication mediums, such as Internet and cable services, in a list of entities that provide essential services. (Providers of essential services are generally provided access to disaster sites in order to restore and repair services during emergency situations.) Finally, S. 2997 would direct the General Accountability Office (GAO) to study ways the federal government could increase the resiliency of essential communication services during emergencies.

On the basis of information provided by the FCC, CBO estimates that carrying out the analysis required by the bill would increase the agency’s administrative costs by less than \$500,000; such spending would be subject to the availability of appropriated funds. 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 those provisions would be negligible, assuming appropriation actions consistent with the agency’s authorities. Based on the costs of similar reports conducted by GAO, CBO estimates that the increased costs to GAO to conduct the required study would be insignificant.

Enacting S. 2997 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting S. 2997 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

S. 2997 contains no intergovernmental or private-sector mandate as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

On June 8, 2016, CBO transmitted a cost estimate for H.R. 3998, the Securing Access to Networks in Disasters Act, as passed by the House of Representatives on May 23, 2016. The two pieces of legislation are similar and CBO's estimate of their budgetary effects are the same.

The CBO staff contact for this estimate is Stephen Rabent. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

The number of persons covered by S. 2997 should be consistent with the current levels of persons impacted under the provisions that are addressed in the bill.

ECONOMIC IMPACT

S. 2997 is not expected to have an adverse impact on the Nation's economy.

PRIVACY

The bill is not expected to have an adverse effect on the personal privacy of any individuals.

PAPERWORK

The Committee does not anticipate an increase in paperwork burdens resulting from the passage of this legislation.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title.

This section would provide that the Act may be cited as the "Securing Access to Networks in Disasters Act of 2016."

Section 2. Sense of Congress.

This section would provide the sense of Congress that the voluntary policies outlined in the Wireless Network Resiliency Cooperative Framework should be adhered to by all parties.

Section 3. Securing access to networks in disasters.

Subsection (a) of this section would define the terms “Commission”, “mobile service”, “times of emergency”, and “WiFi access points” for purposes of the section.

Subsection (b) of this section would require the FCC, no later than 36 months after enactment, to submit to Congress and make publicly available on the FCC’s website a study on the public safety benefits and technical feasibility and cost of alternative means of providing the public with access to 9-1-1 services during times of emergency when mobile service is unavailable. Specific alternative means of access to study would be: making telecommunications service provider-owned WiFi access points, and other telecommunications service provider-owned communications technologies operating on unlicensed spectrum, available to the general public for access to 9-1-1 services; and the provision by non-telecommunications service provider-owned WiFi access points of public access to 9-1-1 services. In conducting the study, the FCC would be required to consider issues, including communications network provider liability, the operational security of communications networks, and existing actions or authorities in and among the States.

Subsection (c) of this section would require the Government Accountability Office (GAO) to report, no later than 18 months after enactment, on how Executive departments, as defined in that subsection, can better ensure essential communications services remain operational during times of emergency. The report would include, if appropriate, any legislative matters Congress could consider to help promote communications resiliency. Further, the GAO would study whether a nationwide directory of points of contact among providers of essential communications services is needed to facilitate the rapid restoration of such services damaged during times of emergency. In studying whether such a directory is needed, the GAO would be required to consider: any similar directories that exist, including their effectiveness; how such a directory could be established and updated, including what types of information would be most useful for such a directory; how to adequately ensure the confidentiality of sensitive information and the security of services included in such a directory; and the resources necessary to establish and maintain such a directory.

Subsection (d) of this section would amend section 427 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5189e) to include providers of “wireline or mobile telephone service, Internet access service, radio or television broadcasting, cable service, or direct broadcast satellite service” in that Act’s definition of “essential service providers”. The subsection further would add a new subsection (d) to section 427 that directs the President, acting through the Federal Emergency Management Agency, to encourage the adoption of mutual aid agreements that recognize the credentials of essential service providers issued by all parties to such agreements.

Subsection (e) of this section would amend section 403(a)(3) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170b(a)(3)) to authorize Federal agencies, on the direction of the President, to provide assistance essential to meeting immediate threats to life and property resulting from a major disaster by allowing for access to essential service providers necessary

for establishing temporary or restoring wireline or mobile telephone service, Internet access service, radio or television broadcasting, cable service, or direct broadcast satellite service.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, 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 material is printed in italic, existing law in which no change is proposed is shown in roman):

ROBERT T. STAFFORD DISASTER RELIEF AND EMERGENCY ASSISTANCE ACT

[42 U.S.C. 5189e]

SEC. 403. ESSENTIAL ASSISTANCE.

[42 U.S.C. 5170b]

(a) IN GENERAL.—Federal agencies may on the direction of the President, provide assistance essential to meeting immediate threats to life and property resulting from a major disaster, as follows:

(1) FEDERAL RESOURCES, GENERALLY.—Utilizing, lending, or donating to State and local governments Federal equipment, supplies, facilities, personnel, and other resources, other than the extension of credit, for use or distribution by such governments in accordance with the purposes of this Act.

(2) MEDICINE, FOOD, AND OTHER CONSUMABLES.—Distributing or rendering through State and local governments, the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief and disaster assistance organizations medicine durable medical equipment,¹ food, and other consumable supplies, and other services and assistance to disaster victims.

(3) WORK AND SERVICES TO SAVE LIVES AND PROTECT PROPERTY.—Performing on public or private lands or waters any work or services essential to saving lives and protecting and preserving property or public health and safety, including—

(A) debris removal;

(B) search and rescue, emergency medical care, emergency mass care, emergency shelter, and provision of food, water, medicine durable medical equipment,² and other essential needs, including movement of supplies or persons;

(C) clearance of roads and construction of temporary bridges necessary to the performance of emergency tasks and essential community services;

(D) provision of temporary facilities for schools and other essential community services;

(E) demolition of unsafe structures which endanger the public;

(F) warning of further risks and hazards;

¹ So in original. The extra comma probably should follow “medicine”.

² So in original. The extra comma probably should follow “medicine”.

(G) dissemination of public information and assistance regarding health and safety measures;

(H) provision of technical advice to State and local governments on disaster management and control;

(I) reduction of immediate threats to life, property, and public health and safety; **[and]**

(J) provision of rescue, care, shelter, and essential needs—

(i) to individuals with household pets and service animals; and

(ii) to such pets and animals**[.]**; *and*

(K) allowing for access to essential service providers necessary for establishing temporary or restoring wireline or mobile telephone service, Internet access service, radio or television broadcasting, cable service, or direct broadcast satellite service.

(4) CONTRIBUTIONS.—Making contributions to State or local governments or owners or operators of private nonprofit facilities for the purpose of carrying out the provisions of this subsection.

* * * * *

SEC. 427. ESSENTIAL SERVICE PROVIDERS.

[42 U.S.C. 5189e]

(a) DEFINITION.—In this section, the term “essential service provider” means an entity that—

(1) provides—

(A) **[telecommunications service]** *wireline or mobile telephone service, Internet access service, radio or television broadcasting, cable service, or direct broadcast satellite service;*

(B) electrical power;

(C) natural gas;

(D) water and sewer services; or

(E) any other essential service, as determined by the President;

(2) is—

(A) a municipal entity;

(B) a nonprofit entity; or

(C) a private, for profit entity; and

(3) is contributing to efforts to respond to an emergency or major disaster.

(b) Authorization for accessibility. Unless exceptional circumstances apply, in an emergency or major disaster, the head of a Federal agency, to the greatest extent practicable, shall not—

(1) deny or impede access to the disaster site to an essential service provider whose access is necessary to restore and repair an essential service; or

(2) impede the restoration or repair of the services described in subsection (a)(1).

(c) IMPLEMENTATION.—In implementing this section, the head of a Federal agency shall follow all applicable Federal laws, regulations, and policies.

(d) MUTUAL AID AGREEMENTS.—*The President, acting through the Administrator of the Federal Emergency Management Agency,*

shall encourage the adoption of mutual aid agreements that recognize the credentials of essential service providers issued by all parties to the mutual aid agreement.

