

Calendar No. 698

114TH CONGRESS }
2d Session }

SENATE

{ REPORT
114-401

SMALL BUSINESS BROADBAND DEPLOYMENT
ACT OF 2015

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 2283

together with

ADDITIONAL VIEWS



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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

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SMALL BUSINESS BROADBAND DEPLOYMENT ACT OF 2015

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

R E P O R T

[To accompany S. 2283]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2283) to ensure that small business providers of broadband Internet access service can devote resources to broadband deployment rather than compliance with cumbersome regulatory requirements, 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. 2283, as amended, is to extend by at least 3 years the exemption for small businesses from the enhanced transparency rules of the Federal Communications Commission (FCC or Commission) under section 8.3 of title 47, Code of Federal Regulations. For purposes of the bill, a small business would be defined as any broadband Internet access service provider that has 250,000 or fewer broadband subscribers. The bill also would direct the FCC to submit a report to Congress not later than 6 months after the date of enactment that includes the Commission's recommendations regarding whether the bill's small business exemption should be made permanent and whether the definition of small business should be modified for the purposes of a permanent exemption.

BACKGROUND AND NEEDS

As part of the FCC's Protecting and Promoting the Open Internet Order (30 FCC Rcd 5601 (2015)), the Commission adopted enhancements to its preexisting broadband transparency rule. The en-

hanced requirements include disclosure of: commercial terms for prices, other fees, and data cap allowances; performance characteristics, including packet loss, performance by geographic area, and average performance over a reasonable time and during peak usage; and network practices, including those applied to traffic associated with a particular user or group (including any application-agnostic degradation of service to a particular end user), the purpose of user-based or application-based practices, which users or data plans may be affected, the triggers that activate the use of the practice, the types of traffic that are subject to the practice, and the practice's likely effects on the end users' experience.

In response to concerns from smaller providers about the burdens of complying with these enhanced transparency requirements, the Commission has adopted and renewed a temporary exemption from those requirements for providers with 100,000 or fewer broadband subscribers. On December 15, 2015, the FCC's Consumer and Governmental Affairs Bureau adopted and released an order to extend the smaller broadband provider exemption until December 15, 2016.

The text of S. 2283 as introduced would have permanently exempted from the FCC's enhanced transparency rules those broadband Internet access service providers with 500,000 or fewer subscribers or with 1,500 or fewer employees. At the markup, the Committee considered a substitute amendment, offered by Senators Daines and Manchin, to replace the permanent exemption with a 5 year extension and to further limit the exemption to those providers with 250,000 or fewer subscribers. Additionally, the substitute amendment included a provision to direct the FCC to report to Congress whether the exception should be made permanent and whether the qualifying subscriber threshold should be modified for purposes of a permanent exception. The language in the substitute amendment was substantially similar to H.R. 4596, the Small Business Broadband Deployment Act, which was passed unanimously by the House of Representatives on March 16, 2016, and referred to the Committee on Commerce, Science, and Transportation of the Senate on March 17, 2016.

Senator Cantwell offered an amendment to the substitute, as further modified, to include a requirement that the FCC begin a rulemaking to implement the recommendations in the report required by the substitute amendment. The amendment also included a provision to replace the substitute's 5-year extension with a sunset that would extend the exception for the later of 3 years following the bill's enactment or the date on which the Commission adopts rules in the rulemaking required to be commenced by the amendment.

LEGISLATIVE HISTORY

On November 16, 2015, Senators Daines and Risch introduced S. 2283. Senators Gardner, Roberts, Sullivan, and Crapo subsequently cosponsored the bill.

On March 2, 2016, the Committee held a hearing on "Oversight of the Federal Communications Commission" at which all five FCC commissioners testified. During this hearing, Senator Daines asked whether a permanent small business exemption was appropriate. Commissioners Pai and O'Rielly agreed that the enhanced trans-

parency rules disproportionately impact small businesses and that a permanent exemption is warranted. At the same hearing, Commissioner Rosenworcel indicated her belief that the FCC should consider a longer, and potentially permanent, exemption than the 1-year exemption currently provided by the FCC.

On March 17, 2016, H.R. 4596, the House companion bill to S. 2283, was referred to the Committee.

On June 15, 2016, the Committee held an Executive Session during which S. 2283 was considered. The bill was reported favorably, as amended by Senators Daines, Manchin, and Cantwell, with an amendment (in the nature of a substitute).

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. 2283—Small Business Broadband Deployment Act of 2016

S. 2283 would modify disclosure requirements enforced by the Federal Communications Commission (FCC) to exempt certain broadband providers from requirements to give consumers information about the performance and cost of their services. CBO estimates that implementing S. 2283 would have no significant effect on the federal budget.

Under the FCC's current rules, broadband providers with 100,000 or fewer subscribers are exempt from those reporting requirements until December 16, 2016, at which time the Commission plans to adopt final regulations to implement those requirements. S. 2283 would expand the exemption to include broadband providers with 250,000 or fewer subscribers for up to three years after the date of enactment. The bill also would direct the FCC to submit a report with recommendations to the Congress on this exemption policy within six months of enactment and to conduct a rulemaking to implement the recommendations of the report.

On the basis of information from the FCC, CBO estimates that the rulemaking activities needed to implement the provisions of S. 2283 would have no significant effect on the agency's costs relative to current policies. 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 S. 2283 would be negligible, assuming annual appropriation actions consistent with the agency's authorities. Because enacting S. 2283 would not affect direct spending or revenues, pay-as-you-go procedures do not apply.

CBO estimates that enacting S. 2283 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

S. 2283 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

On March 4, 2016, CBO transmitted a cost estimated for H.R. 4596, the Small Business Broadband Deployment Act, as ordered reported by the House Committee on Energy and Commerce on

February 25, 2016. The provisions in that act are similar to S. 2283 and CBO's estimates of the costs 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 this legislation should be consistent with current levels.

ECONOMIC IMPACT

S. 2283, as reported, would exempt for at least 3 years broadband providers with 250,000 or fewer subscribers from the FCC's enhanced transparency rules under section 8.3 of title 47, Code of Federal Regulations. Implementation of the legislation would relieve small businesses of burdensome regulation. S. 2283 is not expected to negatively impact on the Nation's economy. To the contrary, economic benefits should follow from implementation of the legislation. For at least 3 years, small broadband Internet access providers would be able to avoid the costs associated with compliance with these regulatory requirements.

PRIVACY

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

PAPERWORK

The Committee does not anticipate an increased paperwork burden on regulated entities as a result of this legislation. To the contrary, the Committee expects entities that qualify for the bill's exemption to face fewer paperwork requirements than they would in the absence of such exemption.

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 "Small Business Broadband Deployment Act of 2016".

Section 2. Small business exemption.

Subsection (a) of this section would define "appropriate congressional committees" to mean the Committee on Commerce, Science,

and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives; “broadband Internet access service” to have the meaning given the term in section 8.2 of title 47, Code of Federal Regulations; “Commission” to mean the Federal Communications Commission; and, “small business” to mean any provider of broadband Internet access service that has not more than 250,000 subscribers.

Subsection (b) of this section would provide that the FCC’s enhanced transparency rules under section 8.3 of title 47, Code of Federal Regulations, shall not apply to any small business.

Subsection (c) of this section would require the FCC, not later than 180 days after the bill’s date of enactment, to submit to Congress a report that contains recommendations regarding whether the bill’s exception should be made permanent and whether the definition of small business should be modified for such an exception.

Subsection (d) of this section would require the Commission, not later than 180 days after submitting the report required by subsection (c), to begin a rulemaking to implement the recommendations in such report. Should the Commission adopt rules as a result of the proceeding required to be commenced under this subsection, the Committee expects that any such adoption be by a vote of the Commission.

Subsection (e) of this section would provide that the exception provided under subsection (b) shall end after the later of the date that is three years after the date of the bill’s enactment or the date on which the FCC adopts rules in the proceeding required to be commenced under subsection (d). Because the bill does not require the Commission to adopt rules under the proceeding required to be commenced under subsection (d), the sunset provided in subsection (e) would permit the exception under subsection (b) to continue indefinitely if the Commission does not adopt rules under the proceeding required to be commenced under subsection (d).S6602

ADDITIONAL VIEWS OF SENATOR NELSON

I continue to have concerns about S. 2283, the Small Business Broadband Deployment Act of 2016, even after the amendments adopted by the Committee at markup. The legislation would upset a carefully crafted balance in the Federal Communications Commission’s (FCC’s) Open Internet Order. That Order recognized that all subscribers, irrespective of the size of their broadband providers, should know fundamental and necessary information about the cost and quality of their broadband service. At the same time, the FCC also decided, out of an abundance of caution, to provide additional time for small broadband providers—those with 100,000 or less subscribers—to come into compliance with the enhanced consumer transparency rules.

By expanding the definition of who is a small broadband provider, this legislation would mean that approximately three million consumers, who currently receive these enhanced disclosures about their broadband service, will suddenly lose access to important information about how their broadband provider operates its network. This legislation also puts into place a path to making this exemption permanent. While I understand the desire by some to take that step, we do not know what the future may hold. Rather,

the current process whereby the FCC reviews whether there is a continuing need for the small broadband provider exemption on a periodic basis is a better, more targeted approach. It allows the FCC to calibrate application of the exemption, and makes sure that there is not a permanent class of broadband subscribers created (more than 9 million, if the bill's expanded definition of small business is adopted) whose members never benefit from the enhanced disclosures required by the FCC. This legislation would serve to keep those millions of consumers largely in the dark about the fees associated with their service, along with how their monthly broadband usage can affect their rates.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill as reported would make no change to existing law.

