

RESOLUTION DIRECTING THE SECRETARY OF HOMELAND SECURITY TO TRANSMIT CERTAIN DOCUMENTS TO THE HOUSE OF REPRESENTATIVES RELATING TO DEPARTMENT OF HOMELAND SECURITY POLICIES AND ACTIVITIES RELATING TO HOMELAND SECURITY INFORMATION PRODUCED AND DISSEMINATED REGARDING CYBERSECURITY THREATS POSED BY THE ZTE CORPORATION, HEADQUARTERED IN SHENZHEN, CHINA

JUNE 8, 2018.—Referred to the House Calendar and ordered to be printed

Mr. McCAUL, from the Committee on Homeland Security, submitted the following

ADVERSE REPORT

together with

DISSENTING VIEWS

[To accompany H. Res. 898]

The Committee on Homeland Security, to whom was referred the resolution (H. Res. 898) directing the Secretary of Homeland Security to transmit certain documents to the House of Representatives relating to Department of Homeland Security policies and activities relating to homeland security information produced and disseminated regarding cybersecurity threats posed by the ZTE Corporation, headquartered in Shenzhen, China, having considered the same, report unfavorably thereon without amendment and recommend that the resolution not be agreed to.

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PURPOSE AND SUMMARY

On May 16, 2018, Representative Bennie G. Thompson of Mississippi introduced H. Res. 898, a non-binding resolution of inquiry requesting the Secretary of Homeland Security transmit to the House of Representatives, homeland security information in the possession of the Secretary that refers or relates to the following:

1. Any documentation related to the use of any ZTE Corporation's products by the Department of Homeland Security.
2. Any documentation related to cybersecurity threats or vulnerabilities resulting from the use of ZTE Corporation's products by the Department of Homeland Security or the Department's contractors.
3. Any documentation related to the cybersecurity threats or vulnerabilities resulting from the use of ZTE Corporation's products by State and local governments and first responders.
4. Any documentation related to any alerts or warnings issued by the Department of Homeland Security related to the use of ZTE Corporation's cybersecurity products.
5. Any documentation related to cybersecurity threats or vulnerabilities posed by the use of ZTE Corporation products by the Federal Government.
6. Any documentation related to cybersecurity threats or vulnerabilities from state actors, including Iran, or terrorist organizations resulting from ZTE Corporation's activities.

BACKGROUND AND NEED FOR LEGISLATION

A resolution of inquiry is a House resolution directing the President or the head of an executive department to provide to the House specific information in the possession of the Administration.

Clause 7 of House Rule XIII provides that, if properly drafted, a resolution of inquiry is provided special parliamentary status allowing the Committee to which the measure was referred to be discharged if the Committee has not reported the measure back to the House within 14 legislative days after its introduction.

The Committee notes that the consideration of this resolution of inquiry is to have the Committee comply with Rule XIII, it does not affect the Committee's obligation or commitment to investigate and require documentation from the Administration on issues within the Committee's jurisdictional authorities.

This Committee has several ongoing, bipartisan oversight projects related to Department of Homeland Security supply chain risk management, threats posed by Chinese telecommunications, and other related counterintelligence threats.

HEARINGS

No hearings were held on H. Res. 898 in the 115th Congress.

COMMITTEE CONSIDERATION

The Committee met on June 6, 2018, to consider H. Res. 898, and ordered the measure to be reported to the House with an unfavorable recommendation, without amendment, by a recorded vote of 16 yeas and 11 nays (Roll Call Vote No. 37).

COMMITTEE VOTES

Clause 3(b) of Rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto.

The Committee on Homeland Security considered H. Res. 898 on June 6, 2018, and took the following vote:

On ordering the resolution to be reported to the House of Representatives with an unfavorable recommendation.

Not Agreed to: 16 yeas and 11 nays.

Representative	Yea	Nay	Representative	Yea	Nay
Mr. McCaul, Chair.	X		Mr. Thompson of Mississippi, Ranking Member.		X
Mr. Smith of Texas			Ms. Jackson Lee		
Mr. King of New York	X		Mr. Langevin		X
Mr. Rogers of Alabama	X		Mr. Richmond		X
Mr. Barletta	X		Mr. Keating		X
Mr. Perry	X		Mr. Payne		X
Mr. Katko	X		Mr. Vela		X
Mr. Hurd	X		Mrs. Watson Coleman		X
Ms. McSally	X		Miss Rice of New York		X
Mr. Ratcliffe			Mr. Correa		X
Mr. Donovan	X		Mrs. Demings		X
Mr. Gallagher	X		Ms. Barragán		X
Mr. Higgins of Louisiana	X				
Mr. Garrett	X				
Mr. Fitzpatrick	X				
Mr. Estes	X				
Mr. Bacon	X				
Mrs. Lesko	X				
			Vote Total:	16	11

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of Rule XIII of the Rules of the House of Representatives, the Committee has held oversight hearings and made findings that are reflected in this report.

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. Res. 898, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of Rule XIII of the Rules of the House of Representatives, a cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not made available to the Committee in time for the filing of this report. The Committee estimates that this non-binding resolution would not result in any significant costs.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of Rule XIII of the Rules of the House of Representatives, H. Res. 898 requests that Secretary of the Department of Homeland Security transmit documents related to the use of any ZTE Corporation's products by the Department of Homeland Security; cybersecurity threats or vulnerabilities resulting from the use of ZTE Corporation's products by the Department of Homeland Security or the Department's contractors; cybersecurity threats or vulnerabilities resulting from the use of ZTE Corporation's products by State and local governments and first responders; any alerts or warnings issued by the Department of Homeland Security related to the use of ZTE Corporation's cybersecurity products; cybersecurity threats or vulnerabilities posed by the use of ZTE Corporation products by the Federal Government; and cybersecurity threats or vulnerabilities from state actors, including Iran, or terrorist organizations resulting from ZTE Corporation's activities. And to provide these documents to the U.S. House of Representatives.

DUPLICATIVE FEDERAL PROGRAMS

Pursuant to clause 3(c) of Rule XIII, the Committee finds that H. Res. 898 does not contain any provision that establishes or reauthorizes a program known to be duplicative of another Federal program.

CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with Rule XXI of the Rules of the House of Representatives, this resolution, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of the Rule XXI.

FEDERAL MANDATES STATEMENT

An estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act was not made available to the Committee in time for the filing of this report. The Committee believes that no Federal mandates are included in this resolution.

PREEMPTION CLARIFICATION

In compliance with section 423 of the Congressional Budget Act of 1974, requiring the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt State, local, or Tribal law,

the Committee finds that H. Res. 898 does not preempt any State, local, or Tribal law.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that H. Res. 898 would require no directed rule makings.

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

H.Res. 898, if passed, would require the Secretary of Homeland Security to provide documents to the House of Representatives within 14 days of passage.

The documents requested relate to the ZTE Corporation and its relationship to the Department of Homeland Security including: the use of any ZTE Corporation's products by the Department of Homeland Security; cybersecurity threats or vulnerabilities resulting from the use of ZTE Corporation's products by the Department of Homeland Security or the Department's contractors; cybersecurity threats or vulnerabilities resulting from the use of ZTE Corporation's products by State and local governments and first responders; any alerts or warnings issued by the Department of Homeland Security related to the use of ZTE Corporation's cybersecurity products; cybersecurity threats or vulnerabilities posed by the use of ZTE Corporation products by the Federal Government; and cybersecurity threats or vulnerabilities from state actors, including Iran, or terrorist organizations resulting from ZTE Corporation's activities. And to provide these documents to the U.S. House of Representatives.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

H. Res. 898 makes no changes to existing law.

DISSENTING VIEWS

On Wednesday, June 6, 2018, the Committee on Homeland Security rejected H. Res. 898, a Resolution of Inquiry directing the Secretary of Homeland Security to transmit certain documents to the House of Representatives regarding Department of Homeland Security (DHS) policies and activities relating to homeland security information produced and disseminated regarding cybersecurity threats posed by the ZTE Corporation, a telecommunications company headquartered in Shenzhen, China.

ZTE has a long track record of rejecting international business norms, operating in secrecy, and doing the bidding of the Chinese government. In 2012, ZTE and another Chinese telecommunications equipment manufacturer, Huawei, were the subject of a high-profile investigation by the House Permanent Select Committee on Intelligence, which ultimately concluded that “the risks associated with Huawei’s and ZTE’s provision of equipment to U.S. critical infrastructure could undermine core U.S. national-security interests.”¹ The report included sweeping recommendations for the U.S. Intelligence Community (IC) to “remain vigilant and focused on this threat . . . [and] actively seek to keep cleared private sector actors as informed of the threat as possible.”² It also directed the Committee on Foreign Investment in the United States to block acquisitions involving ZTE, and urged private entities to “consider the long-security risks” of doing business with ZTE.³

In 2016, the Commerce Department imposed stiff penalties on ZTE for violating U.S. sanctions by making hundreds of shipments of microprocessors, routers, servers and other telecommunications equipment that was made with U.S. parts to Iran, Sudan, North Korea, Syria, and Cuba. In 2017, the Commerce Department entered into a settlement with ZTE where the company agreed to pay fines and punish employees involved in breaching U.S. sanctions or have its export privileges denied for seven years. In April, when the Commerce Department learned that the settlement had been breached, it was forced to bar U.S. companies from exporting to Chinese telecom equipment maker ZTE for seven years. In May, the Department of Defense (DOD) announced that it was banning U.S. military bases from selling Huawei and ZTE phones on the grounds that the devices “may pose an unacceptable risk” of spying on soldiers or revealing troop whereabouts,⁴ and the Federal Com-

¹U.S. House of Representatives Permanent Select Committee on Intelligence, Investigative Report on the U.S. National Security Issues Posed by Chinese Telecommunications Companies Huawei and ZTE, 112th Con. (Oct. 8, 2012), available at [https://intelligence.house.gov/sites/intelligence.house.gov/files/dicynets/huawei-zte%20investigative%20report%20\(final\).pdf](https://intelligence.house.gov/sites/intelligence.house.gov/files/dicynets/huawei-zte%20investigative%20report%20(final).pdf).

²*Id.*

³*Id.*

⁴“Pentagon Orders Stores on Military Bases to Remove Huawei, ZTE Phone,” *The Wall Street Journal* (May 2, 2018), available at <https://www.wsj.com/articles/pentagon-asking-military-bases-to-remove-huawei-zte-phones-1525262076?mod=djemalertNEWS&ns=prod/accounts->

munications Commission proposed rules barring small, rural carriers from buying Chinese-made telecommunications equipment.⁵

Then, inexplicably, on May 13, 2018, President Trump tweeted, without warning or explanation, that he had spoken with President Xi of China and that he was directing the Commerce Department to work to save ZTE and Chinese jobs.⁶ It is unclear whether the President familiarized himself with the IC's significant concerns about ZTE or whether there was any engagement with the IC or DHS prior to tweeting this new policy on ZTE. What we do know is that two days before the announcement, the Chinese government agreed to help finance the development of a Trump-branded resort property in Indonesia, offering roughly \$500 million toward construction of the project. We also know that a day after the President tweeted about easing sanctions on ZTE, the company hired Bryan Lanza, a former Trump Campaign staffer to lobby on its behalf.

I introduced this Resolution of Inquiry in response to urgent warnings from national security experts, including the Director of National Intelligence and top officials at the Federal Bureau of Investigation, the Central Intelligence Agency, and the National Security Agency, among others, that the use of ZTE products could create an access point for the Chinese government to conduct espionage.⁷ Consideration of H. Res. 898 provided Members of the Committee on Homeland Security with the opportunity to send a strong statement of concern about the direction the Trump Administration is going on this national security matter.

The Resolution of Inquiry would have forced DHS to provide Congress with information to get a better understanding of the implications, particularly the cybersecurity implications, of easing sanctions against ZTE. Given that the Pentagon was in the process of barring the sale of ZTE devices on military bases, it seems reasonable that DHS would have conducted its own investigations and arrived at its own national security conclusions. Unfortunately, the Majority chose to stay silent on this urgent national security issue and unanimously voted to report the measure unfavorably to the House of Representatives. With this vote, the Majority essentially decided to look away as the Trump Administration pursued efforts to relax its punishment of ZTE, discounting the significant national security concerns voiced by DOD, the IC, security experts and U.S. allies. The day after the markup, Secretary of Commerce Wilbur Ross announced that the seven-year ban on ZTE buying American parts would be relaxed, as the company had agreed to pay a \$1 billion fine and adopt a new compliance regime.

Congress has a responsibility to be a check on the Administration. By voting down H. Res. 898, the Majority chose to sit on the sidelines and let the Trump Administration ease sanctions on a company that DOD, the IC, security experts and U.S. allies believe

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⁵Federal Communications Commission Notice of Proposed Rulemaking, *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, FCC 18-42 (Apr. 18, 2018).

⁶Twitter, Donald J. Trump, @realDonaldTrump (May 13, 2018 at 11:01 AM).

⁷Testimony of Daniel R. Coats, Director of National Intelligence, Michael Pompeo, CIA Director, Adm. Michael Rogers, NSA Director, and Chris Wray, FBI Director, before the U.S. Senate Select Committee on Intelligence hearing entitled *Worldwide Threats* (Feb. 13, 2018).

to be a threat to our national security. As such, I dissent against the Committee's decision to stand in the way of oversight of this urgent national security matter.

BENNIE G. THOMPSON,
Ranking Member.

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