

Calendar No. 164

116TH CONGRESS }
1st Session }

SENATE

{ REPORT
116-66

ELIMINATE FROM REGULATORS OPPORTU-
NITIES TO NATIONALIZE THE INTERNET
IN EVERY RESPECT ACT

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 918



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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

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

R E P O R T

[To accompany S. 918]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 918) to prohibit the President or a Federal agency from constructing, operating, or offering wholesale or retail services on broadband networks without authorization from Congress, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

S. 918 would prohibit the President or any Federal agency from creating or operating a wholesale or retail broadband network. It also would task the Government Accountability Office (GAO) with conducting a study on the vulnerabilities of U.S. broadband networks to foreign threats.

BACKGROUND AND NEEDS

American leadership in fourth generation (4G) mobile technology—mobile broadband service allowing high-speed, high-definition video—is credited by one major U.S. wireless trade association with a \$100 billion increase in annual GDP in 2016, an increase in total wireless-related jobs of 84 percent between 2011 and 2014, and “\$125 billion in revenue to American companies that could

have gone elsewhere if the U.S. hadn't seized 4G leadership.”¹ The U.S. wireless industry notes that these benefits are a result of private-sector investment in developing and deploying this technology. Federal Communications Commission Chairman Ajit Pai has stated, “[t]he lesson of 4G is that ultimately Americans benefited from the free-market approach.”² Today, “America’s wireless industry supports over 4.7 million jobs and contributes \$475 billion annually to the economy.”³

Some parties have suggested that the Nation would benefit from the Federal Government taking the lead in the deployment of fifth generation (5G) wireless networks.⁴ They have argued that the unique nature of 5G networks and their potential eventual use in nearly all facets of the U.S. economy warrant a secure, centralized network. These groups also argue that a centralized network would have greater speed to market. Many stakeholder groups oppose these contentions, citing the success the United States has had with the private model of wireless deployment.⁵ These groups also note that U.S. wireless carriers already are in the process of deploying 5G throughout the country.

This bill would express Congress’s disagreement with the proponents of the Federal Government establishing its own 5G (and other broadband) networks to provide wholesale or retail service to consumers, and in so doing, would promote continued private sector investment, deployment, and innovation in wired and wireless broadband.

This bill also would require that GAO study the potential threats facing United States broadband networks from China, Iran, Russia, and any other potential foreign adversary; and the risks associated with using foreign equipment and services in U.S. broadband networks. This report is necessary given concerns over threats to the security of mobile networks. Although mobile technology provides enormous benefits for consumers and the American economy, “what is good for consumers is also good for intelligence services and cyberattackers.”⁶ A 2012 House Permanent Select Committee on Intelligence report found that “the risks associated with [two Chinese companies’] provision of equipment to U.S. critical infrastructure could undermine core U.S. national-security interests,”⁷ and encouraged U.S. network providers and systems developers “to seek other vendors for their projects.”⁸ Indeed, security concerns related to wireless networks have been highlighted in the United Kingdom,

¹“How America’s 4G Leadership Propelled the U.S. Economy, Recon Analytics”, at 1 (https://api.ctia.org/wp-content/uploads/2018/04/Recon-Analytics_How-Americas-4G-Leadership-Propelled-US-Economy_2018.pdf).

²Dean DeChiaro, “Nationalization question hangs over White House’s 5G Announcement”, Roll Call, Apr. 15, 2019 (<https://www.rollcall.com/news/policy/nationalization-question-hangs-white-houses-5g-announcement>).

³“The Global Race to 5G, CTIA”, at 4 (<https://api.ctia.org/wp-content/uploads/2018/04/Race-to-5G-Report.pdf>).

⁴*Id.*
⁵David Shepardson, “Trump team idea to nationalize 5G network to counter China is rejected”, Reuters, Jan. 29, 2018 (<https://www.reuters.com/article/us-usa-trump-5g-fcc/trump-team-idea-to-nationalize-5g-network-to-counter-china-is-rejected-idUSKBN1FI1T2>).

⁶“In 5G Race with China, U.S. Pushes Allies to Fight Huawei”, New York Times, Jan. 26, 2019 (<https://www.nytimes.com/2019/01/26/us/politics/huawei-china-us-5g-technology.html>).

⁷“Investigative Report on the U.S. National Security Issues Posed by Chinese Telecommunications Companies Huawei and ZTE”, Report by Chairman Mike Rogers and Ranking Member C.A. Dutch Ruppersberger of the Permanent Select Committee on Intelligence, at vi, October 8, 2012 (<https://searchworks.stanford.edu/view/9762611>).

⁸*Id.* at vi.

and New Zealand and Australia have barred one Chinese company's equipment from their mobile networks.⁹

SUMMARY OF PROVISIONS

If enacted, S. 918 would do the following:

- Prohibit the President and Federal agencies from constructing, operating, or offering wholesale or retail service on a broadband network, without authorization from Congress signed into law by the President.
- Require GAO to conduct a study on the vulnerabilities of broadband networks in the United States to foreign threats.

LEGISLATIVE HISTORY

S. 918, the E-FRONTIER Act, was introduced on March 27, 2019, by Senator Ted Cruz (for himself and Senator Cortez-Masto) and was referred to the Committee on Commerce, Science, and Transportation of the Senate. On April 3, 2019, the Committee met in open Executive Session and, by voice vote, ordered S. 918 reported favorably with an amendment offered by Senator Markey, which also was adopted by voice vote.

This bill is identical to S. 3255, as amended, which was introduced by Senator Cruz (for himself and Senator Cortez-Masto) during the 115th Congress.

The House version of this bill, H.R. 2063, was introduced on April 3, 2019, by Representative Tony Cárdenas (for himself and Representatives Brooks, Vela, and Banks), and was referred to the Committee on Energy and Commerce of the House of Representatives.

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. 918, E-FRONTIER Act			
As ordered reported by the Senate Committee on Commerce, Science, and Transportation on April 3, 2019			
Millions of Dollars	2019	2019-2024	2019-2029
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Deficit Effect	0	0	0
Spending Subject to Appropriation (Outlays)	0	*	n.e.
Pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
n.e. = not estimated; * = between zero and \$500,000			

⁹“What is Huawei, and why the arrest of its CFO matters”, CNN Business, Dec. 9, 2018 (<https://www.cnn.com/2018/12/06/tech/what-is-huawei/index.html>).

S. 918 would prohibit the President or federal agencies from constructing, operating, or offering wholesale or retail service on a broadband network unless an act of Congress provides the authority to do so. In addition, the bill would require the Government Accountability Office (GAO) to conduct a study on the potential threats facing U.S. broadband networks from certain foreign countries and adversaries and to report to the Congress on methods to reduce the vulnerabilities of those networks.

Based on the cost of similar activities, CBO estimates that the study and report would cost less than \$500,000. Any spending would be subject to the availability of appropriations.

The CBO staff contact for this estimate is David Hughes. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

Because S. 918 does not create any new programs, the legislation will have no additional regulatory impact, and will result in no additional reporting requirements. The legislation will have no further effect on the number or types of individuals and businesses regulated, the economic impact of such regulation, the personal privacy of affected individuals, or the paperwork required from such individuals and businesses. The bill would direct the Government Accountability Office to prepare a report to Congress on U.S. broadband network vulnerabilities.

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 bill may be cited as the “Eliminate From Regulators Opportunities to Nationalize The Internet In Every Respect Act” or the “E-FRONTIER Act”.

Section 2. Prohibition against the President or a Federal agency constructing, operating, or offering services on broadband networks.

Subsection (a) of this section defines four terms for purposes of this section. The following definition included in subsection (a) is of particular importance:

Broadband Network.—The term “broadband network” means a communications network, the primary purpose of which is to provide consumers with the capability to transmit data to and receive data from all or substantially all internet endpoints. This definition expressly includes a next-generation mobile broadband network.

Subsection (b) of this section would prohibit the President and Federal agencies from constructing, operating, or offering wholesale or retail service on a broadband network, unless a duly enacted Act

of Congress signed into law by the President provides the authority to take such an action.

The Committee intends for the prohibition on constructing and operating a broadband network also to cover situations where the Federal Government contracts with, or creates a partnership with, a private sector entity to construct or operate such a network, or otherwise takes steps (such as leasing or allowing access to wireless spectrum otherwise allocated to the Federal Government) that directly facilitate the construction of such a network by another private sector entity.

Subsection (c) of this section sets forth five rules of construction limiting the prohibition in subsection (b). First, subsection (b) would not limit, restrict, or circumvent the implementation of the nationwide public safety broadband network, operated by the First Responder Network Authority, or any rules implementing that network. Second, subsection (b) would not affect the authority granted to the President under section 706 of the Communications Act of 1934.¹⁰ Third, subsection (b) would not prevent an agency from providing another agency with access to a broadband network. Fourth, subsection (b) would not prevent a private entity from obtaining access to a broadband network at a facility owned or operated by the Federal Government, but only if such entity is under contract to provide services at that facility. Finally, subsection (b) would not affect the authority of the Federal Communications Commission under the Communications Act of 1934.¹¹

Section 3. Report on vulnerabilities of United States broadband networks.

Subsection (a) of this section defines two terms used in the section.

Subsection (b) of this section would require that the Comptroller General of the United States conduct a study and submit to the appropriate committees of Congress (as defined in subsection (a) of this section) a report on vulnerabilities of U.S. broadband networks. That study and report must include the following: (1) a discussion and analysis of the potential threats facing United States broadband networks from China, Iran, Russia, and any other potential foreign adversary of the United States; (2) a discussion and analysis of the risks associated with using foreign equipment and services in U.S. broadband networks; and (3) recommendations, if any, on how service providers can reduce vulnerabilities in their U.S. broadband networks to foreign threats. The report must be submitted within 180 days of enactment of the E-FRONTIER Act.

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.



¹⁰ 47 U.S.C. 606.

¹¹ 47 U.S.C. 151 et seq.