

SECURING ACCESS TO NETWORKS IN DISASTERS 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

[To accompany H.R. 3998]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 3998) 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, report favorably thereon with amendments and recommend that the bill as amended do pass.

CONTENTS

	Page
Purpose and Summary	2
Background and Need for Legislation	2
Hearings	4
Committee Consideration	4
Committee Votes	4
Committee Oversight Findings	4
Statement of General Performance Goals and Objectives	4
New Budget Authority, Entitlement Authority, and Tax Expenditures	4
Earmark, Limited Tax Benefits, and Limited Tariff Benefits	4
Committee Cost Estimate	4
Congressional Budget Office Estimate	5
Federal Mandates Statement	5
Duplication of Federal Programs	5
Disclosure of Directed Rule Makings	5
Advisory Committee Statement	5
Applicability to Legislative Branch	5
Section-by-Section Analysis of the Legislation	5
Changes in Existing Law Made by the Bill, as Reported	6
Exchange of Letters with Additional Committees of Referral	8

The amendments are as follows
 Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Securing Access to Networks in Disasters Act”.

SEC. 2. STUDY ON NETWORK RESILIENCY.

Not later than 36 months after the date of enactment of this Act, the Commission shall submit to Congress, and make publically available on the Commission’s website, a study on—

- (1) making telecommunications service provider-owned WiFi access points, and other communications technologies operating on unlicensed spectrum, available to the general public for access to 911 services, without requiring any login credentials, during times of emergency when mobile service is unavailable; and
- (2) whether non-telecommunications service provider-owned WiFi access points can provide public access to 911 services during times of emergency.

SEC. 3. ACCESS TO ESSENTIAL SERVICE PROVIDERS DURING FEDERALLY DECLARED EMERGENCIES.

Section 427(a)(1)(A) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5189e(a)(1)(A)) is amended by striking “telecommunications service” and inserting “wireline or mobile telephone service, Internet access service, radio or television broadcasting, cable service, or direct broadcast satellite service”.

SEC. 4. DEFINITIONS.

As used in this Act and for purposes of the rules required by this Act—

- (1) the term “Commission” means the Federal Communications Commission;
- (2) the term “mobile service” means commercial mobile service (as defined in section 332 of the Communications Act of 1934 (47 U.S.C. 332)) or commercial mobile data service (as defined in section 6001 of the Middle Class Tax Relief and Job Creation Act of 2012 (47 U.S.C. 1401));
- (3) the term “WiFi access point” means wireless Internet access using the standard designated as 802.11 or any variant thereof; and
- (4) the term “times of emergency” means either an emergency as defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122), or an emergency as declared by the governor of a State or territory of the United States.

Amend the title so as to read:

A bill to direct the Federal Communications Commission to conduct a study on network resiliency during times of emergency, and for other purposes.

PURPOSE AND SUMMARY

H.R. 3998, Securing Access to Networks in Disasters (SANDy) Act, introduced by Ranking Member Frank Pallone, Jr. (D–NJ), seeks to ensure that Americans have better access to communications networks during emergencies. The SANDy Act would give all communications providers—radio, TV, telephone, and Internet—better access to disaster areas and to the resources they need to restore service. The bill would also require the Federal Communications Commission (FCC) to study the potential use of WiFi communications during emergencies.

BACKGROUND AND NEED FOR LEGISLATION

When Super Storm Sandy struck in October 2012, it wreaked havoc across the Northeast. People who lived in these areas turned to communications networks—telecommunications, broadcast, and cable—for critical information and to call for help. Unfortunately, many of these systems were not available when people needed them most. For instance, the storm knocked off-line nearly 25 per-

cent of the cell sites in its path, with more than 50 percent off-line in the hardest-hit counties.¹

The public's ability to communicate often hinges on the viability of commercial networks. To keep potentially lifesaving information flowing, the personnel who maintain communications networks need access protected areas and resources. For instance, when the power goes out, communications equipment must rely on backup generators that require fuel. During emergencies, however, broadcasters, cable operators, and telecommunications providers have struggled to obtain fuel. According to reports, even when network operators obtain the resources they need, they can be confiscated to restore other services that are considered "essential" under the law.

Moreover, in the chaos that follows a major disaster, merely getting access to the disaster area can be challenging. During Sandy, communications providers were turned away at because they were not considered essential to the recovery effort. As a result, communications networks remained down hours or even days longer than necessary leaving those in the disaster area stranded without critical information or ways to call for help.

The SANDy Act would recognize the critical role wireline and mobile telephone, Internet, radio and television broadcasting, and cable and satellite services play by adding them to the list of essential service providers. Having these networks operational not only speed recovery efforts, they can mean the difference between life and death during an event like Super Storm Sandy. The bill further requires the FCC to study how WiFi could be used to help facilitate emergency communications during disasters, as some telecommunications providers have done during emergencies.

When the SANDy Act was first introduced, it contained additional provisions, primarily addressing customer access to wireless networks during an emergency. Specifically, the Act as introduced would have required that during emergencies, consumers' cell phones could work on another carriers' networks if a consumer's own network goes down.

Just before the bill was considered at full Committee markup, the five largest U.S. wireless carriers announced that they would voluntarily act on a number of the wireless provisions in the bill. Under the new "Wireless Network Resiliency Cooperative Framework," the wireless providers voluntarily agreed to:

- (1) Provide for reasonable arrangements for roaming during disasters when technically feasible,
- (2) Foster mutual aid during emergencies,
- (3) Enhance local governments' preparedness and restoration,
- (4) Increase consumer readiness and preparation, and
- (5) Improve public awareness and stakeholder communications on service and restoration status by providing public information on actual outages for given disasters or emergencies.

In light of this agreement, Ranking Member Pallone offered an amendment during the full Committee markup of the SANDy Act to remove the wireless provisions. The Committee adopted this

¹ Improving the Resiliency of Mobile Wireless Communications Networks, PS Docket No. 13-239, ¶3, Notice of Proposed Rulemaking (Rel. September 27, 2013 (online at <http://apps.fcc.gov/ecfs/comment/view?id=6017468877>)).

amendment, refocusing the SANDy Act on ensuring that communication networks operators can get access to the resources necessary to repair and maintain their networks during disasters.

HEARINGS

On April 13, 2016, the Subcommittee on Communications and Technology held a hearing on H.R. 3998. The Subcommittee received testimony on the legislation from:

- Mr. Scott Bergmann, Vice President of Regulatory Affairs, CTIA—The Wireless Association.

COMMITTEE CONSIDERATION

On April 18 and 19, 2016 the Subcommittee on Communications and Technology met in open markup session and forwarded H.R. 3998 to the full Committee, without amendment, by a voice vote.

On April 26, 27, and 28, 2016, the full Committee on Energy and Commerce met in open markup session and ordered H.R. 3998 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. There were no record votes taken in connection with ordering H.R. 3998 reported.

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

H.R. 3998, the Securing Access to Networks in Disasters (SANDy) Act, seeks to ensure that Americans have access to the nation's communications networks during emergencies.

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. 3998 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. 3998 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. At the time this report was filed, the estimate was not available.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

At the time this report was filed, the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not available.

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. 3998 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. 3998 specifically directs to be completed no rule makings within the meaning of 5 U.S.C. 551.

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 “Securing Access to Networks in Disasters Act.”

Section 2. Study on network resiliency

Section 2 requires the FCC to submit a report to Congress within 36 months that studies making WiFi access points available to the public at no charge during times of emergency. The FCC’s study should focus on access points owned by telecommunications service providers, but should also analyze whether such a requirement would be feasible for access points not owned or operated by telecommunications service providers.

Section 3. Access to essential service providers during federally declared emergencies

Section 3 would amend section 427 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act by adding wireline and mobile telephone service, Internet access service, radio and television broadcasting, cable service, and direct broadcast satellite service to the list of “essential service providers” under the Act.

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):

**ROBERT T. STAFFORD DISASTER RELIEF AND
EMERGENCY ASSISTANCE ACT**

* * * * *

**TITLE IV—MAJOR DISASTER
ASSISTANCE PROGRAMS**

* * * * *

SEC. 427. ESSENTIAL SERVICE PROVIDERS.

(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.

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EXCHANGE OF LETTERS WITH ADDITIONAL COMMITTEES OF REFERRAL



Committee on Transportation and Infrastructure
U.S. House of Representatives

Bill Shuster
Chairman

Washington, DC 20515

Peter A. DeFazio
Ranking Member

May 18, 2016

Christopher P. Besterman, Staff Director

Katherine W. Dedrick, Democratic Staff Director

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman:

I write concerning H.R. 3998, the *Securing Access to Networks in Disasters Act*, as ordered reported by the Committee on Energy and Commerce. There are certain provisions in the legislation that fall within the Rule X jurisdiction of the Committee on Transportation and Infrastructure.

In order to expedite this legislation for Floor consideration, the Committee will forgo action on this bill. However, this is conditional on our mutual understanding that forgoing consideration of the bill does not alter or diminish the jurisdiction of the Committee with respect to the appointment of conferees or to any future jurisdictional claim over the subject matters contained in the bill or similar legislation. I request you urge the Speaker to name members of the Committee to any conference committee named to consider such provisions.

Please place a copy of this letter and your response acknowledging our jurisdictional interest into the *Congressional Record* during consideration of the measure on the House Floor. I appreciate the Committee on Energy and Commerce working with me to address my concerns.

Sincerely,

A handwritten signature in black ink that reads "Bill Shuster".

Bill Shuster
Chairman

cc: The Honorable Paul D. Ryan
The Honorable Peter A. Defazio
The Honorable Frank Pallone, Jr.
Mr. Thomas J. Wickham, Jr., Parliamentarian

FRED UPTON, MICHIGAN
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

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May 19, 2016

The Honorable Bill Shuster
Chairman
Committee on Transportation and Infrastructure
2165 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Shuster:

Thank you for your letter concerning H.R. 3998, Securing Access to Networks in Disasters Act, as ordered reported by the Committee on Energy and Commerce. As you noted, there are certain provision in the legislation that fall within the Rule X jurisdiction of the Committee on Transportation and Infrastructure.

I appreciate your willingness to forgo action on this bill in order to expedite this legislation for Floor consideration. I agree that forgoing consideration of this bill does not alter or diminish the jurisdiction of the Committee on Transportation and Infrastructure with respect to the appointment of conferees or to any future jurisdictional claim over the subject matters contained in the bill or similar legislation. In addition, I will support your request for the Speaker to name members of the Committee to any conference committee named to consider such provisions.

I will place a copy of your letter and this response into the *Congressional Record* during consideration of the measure on the House Floor.

Sincerely,



Fred Upton
Chairman