

SECURE 5G AND BEYOND ACT OF 2019

JANUARY 7, 2020.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. PALLONE, from the Committee on Energy and Commerce,
submitted the following

R E P O R T

[To accompany H.R. 2881]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 2881) to require the President to develop a strategy to ensure the security of next generation mobile telecommunications systems and infrastructure in the United States and to assist allies and strategic partners in maximizing the security of next generation mobile telecommunications systems, infrastructure, and software, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

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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 “Secure 5G and Beyond Act of 2019”.

SEC. 2. STRATEGY TO ENSURE SECURITY OF NEXT GENERATION WIRELESS COMMUNICATIONS SYSTEMS AND INFRASTRUCTURE.

(a) **APPROPRIATE COMMITTEES OF CONGRESS DEFINED.**—In this section, the term “appropriate committees of Congress” means—

(1) the Permanent Select Committee on Intelligence, the Committee on Energy and Commerce, the Committee on Foreign Affairs, the Committee on Armed Services, and the Committee on Homeland Security of the House of Representatives; and

(2) the Select Committee on Intelligence, the Committee on Commerce, Science, and Transportation, the Committee on Foreign Relations, the Committee on Armed Services, and the Committee on Homeland Security and Governmental Affairs of the Senate.

(b) **STRATEGY REQUIRED.**—Not later than 180 days after the date of the enactment of this Act, the President, in consultation with the Chairman of the Federal Communications Commission, the Assistant Secretary of Commerce for Communications and Information, the Secretary of Homeland Security, the Director of National Intelligence, the Attorney General, the Secretary of Defense, and the Secretary of State, shall develop and submit to the appropriate committees of Congress a strategy—

(1) to ensure the security of 5th and future generations wireless communications systems and infrastructure within the United States;

(2) to provide technical assistance to mutual defense treaty allies of the United States, strategic partners of the United States, and other countries, when in the security interests of the United States, to maximize the security of 5th and future generations wireless communications systems and infrastructure inside their countries; and

(3) to protect the competitiveness of United States companies, privacy of United States consumers, and integrity and impartiality of standards-setting bodies related to 5th and future generations wireless communications systems and infrastructure.

(c) **DESIGNATION.**—The strategy developed under subsection (b) shall be known as the “Secure Next Generation Wireless Communications Strategy” (referred to in this section as the “Strategy”).

(d) **ELEMENTS.**—The Strategy shall represent a whole-of-government approach and shall include the following:

(1) A description of United States national and economic security interests pertaining to the deployment of 5th and future generations wireless communications systems and infrastructure.

(2) An identification and assessment of potential security threats and vulnerabilities to the infrastructure, equipment, systems, software, and virtually defined networks that support 5th and future generations wireless communications systems and infrastructure. The assessment shall include a comprehensive evaluation of the full range of threats to, and unique security challenges posed by, 5th and future generations wireless communications systems and infrastructure, as well as steps that public and private sector entities can take to mitigate such threats.

(3) An identification and assessment of the global competitiveness and vulnerabilities of United States manufacturers and suppliers of 5th and future generations wireless communications equipment.

(4) A list of available domestic suppliers of 5th and future generations wireless communications equipment and other suppliers in countries that are mutual defense allies or strategic partners of the United States and a strategy to assess their ability to produce and supply 5th generation and future generations wireless communications systems and infrastructure.

(5) Identification of trusted supplier entities from both inside and outside the United States that are capable of producing and supplying to private industry infrastructure and systems equipment supporting 5th and future generations wireless communications systems and infrastructure.

(6) Identification of where security gaps exist in the United States domestic or mutual defense treaty allies and strategic partners communications equipment supply chain for 5th and future generations wireless communications systems and infrastructure.

(7) Identification of incentives and policy options to help close or narrow any security gaps identified under paragraph (6) in, and ensure the economic viability of, the United States domestic industrial base, including research and development in critical technologies and workforce development in 5th and future generations wireless communications systems and infrastructure.

(8) Identification of incentives and policy options for leveraging the communications equipment suppliers from mutual defense treaty allies, strategic partners, and other countries to ensure that private industry in the United States has adequate sources for secure, effective, and reliable 5th and future generations wireless communications systems and infrastructure equipment.

(9) A strategy for diplomatic engagement with mutual defense treaty allies, strategic partners, and other countries to share security risk information and findings pertaining to 5th and future generations wireless communications systems and infrastructure equipment and cooperation on mitigating those risks.

(10) A strategy for engagement with private sector communications infrastructure and systems equipment developers to share information and findings on 5th and future generations wireless communications systems and infrastructure equipment standards to secure platforms.

(11) A strategy for engagement with private sector communications infrastructure and systems equipment developers to encourage the maximum participation possible on standards-setting bodies related to such systems and infrastructure equipment standards by public and private sector entities from the United States.

(12) A strategy for diplomatic engagement with mutual defense treaty allies, strategic partners, and other countries to share information and findings on 5th and future generations wireless communications systems and infrastructure equipment standards to promote maximum interoperability, competitiveness, openness, and secure platforms.

(13) A strategy for diplomatic engagement with mutual defense treaty allies, strategic partners, and other countries to share information and findings on 5th and future generations wireless communications infrastructure and systems equipment concerning the standards-setting bodies related to such systems and infrastructure equipment to promote maximum transparency, openness, impartiality, integrity and neutrality.

(14) A strategy for joint testing environments with mutual defense treaty allies, strategic partners, and other countries to ensure a trusted marketplace for 5th and future generations wireless communications systems and infrastructure equipment.

(15) A strategy for research and development by the Federal Government, in close partnership with trusted supplier entities, mutual defense treaty allies, strategic partners, and other countries to reach and maintain United States leadership in 5th and future generations wireless communications systems and infrastructure security, including the development of an ongoing monitoring capability of 5th and future generations wireless communications systems to identify security vulnerabilities.

(16) Options for identifying and helping to mitigate the security risks of 5th and future generations wireless communications systems and infrastructure that have security flaws or vulnerabilities, or are utilizing equipment sourced from countries of concern, and that have already been put in place within the systems and infrastructure of mutual defense treaty allies, strategic partners, and other countries, when in the security interests of the United States.

(17) Development of a plan that includes a description of the roles and responsibilities of the appropriate executive branch agencies and interagency mechanisms for the Assistant Secretary of Commerce for Communications and Information to act as the executive agent to coordinate implementation of the Strategy, as provided in subsection (h).

(18) An identification of the key diplomatic, development, intelligence, military, and economic resources necessary to implement the Strategy, including specific budgetary requests.

(19) A description of such legislative or administrative action as may be necessary to carry out the Strategy.

(e) LIMITATION.—

(1) IN GENERAL.—The Strategy shall not include a recommendation or a proposal to nationalize 5th or future generations wireless communications systems or infrastructure.

(2) FEDERAL AGENCY AUTHORITY.—Nothing in this section shall be construed to limit the authority or ability of a Federal agency to—

(A) conduct cybersecurity incident, threat, or asset response and recovery activities;

(B) obtain or execute warrants or other investigative or intelligence tools;

or

(C) provide assistance to a private entity upon request of the entity.

(f) PUBLIC COMMENT.—Not later than 60 days after the date of the enactment of this Act, the President shall seek public comment regarding the development and implementation of the Strategy.

(g) BRIEFING.—

(1) IN GENERAL.—Not later than 14 days after the date on which the Strategy is completed, the Assistant Secretary of Commerce for Communications and Information, and any other Federal officials designated by the President, shall provide to the appropriate committees of Congress a briefing on the implementation of the Strategy.

(2) UNCLASSIFIED SETTING.—The briefing under paragraph (1) shall be held in an unclassified setting to the maximum extent possible.

(h) IMPLEMENTATION.—The Assistant Secretary of Commerce for Communications and Information shall—

(1) act as the executive agent to coordinate implementation of the Strategy;

(2) keep congressional committees apprised of progress on implementation; and

(3) not implement any proposal or recommendation involving spectrum licensed by the Commission unless the implementation of such proposal or recommendation is first approved by the Commission.

(i) FORM.—The Strategy shall be submitted to the appropriate committees of Congress in unclassified form, but may include a classified annex.

Amend the title so as to read:

A bill to require the President to develop a strategy to ensure the security of next generation wireless communications systems and infrastructure in the United States and to assist allies and strategic partners in maximizing the security of next generation wireless communications systems, infrastructure, and software, and for other purposes.

I. PURPOSE AND SUMMARY

Reps. Spanberger (D–VA), Stefanik (R–NY), Slotkin (D–MI), Rooney (R–FL), O’Halloran (D–AZ), and Brooks (R–IN) introduced H.R. 2881, the “Secure 5G and Beyond Act OF 2019,” on May 21, 2019, and the bill was subsequently referred to the Committee on Energy and Commerce on that day. The Secure 5G and Beyond Act directs the President to develop the “Secure Next Generation Mobile Communications Strategy” in consultation with the heads of the Federal Communications Commission (FCC), National Telecommunications and Information Administration (NTIA), Department of Homeland Security (DHS), as well as the Director of National Intelligence (DNI) and Secretary of Defense (DOD).

II. BACKGROUND AND NEED FOR LEGISLATION

5G technology promises evolution across every sector of the American economy. It promises new technology and network applications that touch every aspect of daily lives. While this advancement is beneficial in many ways, it significantly increases risk to national security.

United States communications service providers rely heavily on equipment and services manufactured and provided by untrusted companies. The increasingly globalized market for telecommunications equipment and services has opened the door to cheaper goods for consumers but poses new challenges for the United States, particularly for ensuring the security of the telecommunications supply chain.

Given the pivotal role that private communications networks serve in connecting U.S. critical infrastructure functions, American networks are appealing targets for foreign adversaries. The United

States, therefore, has a clear interest in mitigating threats posed by vulnerable communications equipment and services.

H.R. 2881 would require the President to develop a strategy to mitigate these risks, including specific elements of that strategy to help address risks to 5G and future generation networks.

III. COMMITTEE HEARINGS

For the purposes of section 103(i) of H. Res. 6 of the 116th Congress, the following hearing was used to develop or consider H.R. 2881:

The Subcommittee on Communications and Technology held a legislative hearing on September 27, 2019, entitled, *Legislating to Secure America’s Wireless Future.* The Subcommittee received testimony from the following witnesses:

- John Nettles, President, Pine Belt Wireless;
- Harold Feld, Senior Vice President, Public Knowledge;
- Dean Brenner, Senior Vice President, Spectrum Strategy & Tech Policy, Qualcomm Incorporated; and
- Bobbie Stempfley, Managing Director, CERT Division Software Engineering Institute, Carnegie Mellon University.

IV. COMMITTEE CONSIDERATION

Reps. Spanberger (D–VA), Stefanik (R–NY), Slotkin (D–MI), Rooney (R–FL), O’Halloran (D–AZ), and Brooks (R–IN) introduced H.R. 2881, the “Secure 5G and Beyond Act of 2019”, on May 21, 2019, and was referred to the Committee on Energy and Commerce that same day. The bill was referred to the Subcommittee on Communications and Technology on May 22, 2019. Following a legislative hearing, pursuant to notice, the Subcommittee met in open markup session on November 14, 2019, for consideration of H.R. 2881. An amendment in the nature of a substitute (AINS) was offered by Mr. O’Halloran. During consideration of the AINS, Mr. Cardenas offered an amendment to the O’Halloran AINS, which was agreed to by a voice vote. Subsequently, the Subcommittee adopted the AINS with the Cardenas amendment, and then approved a motion offered by Mr. Doyle, Chairman of the subcommittee, to favorably forward H.R. 2881, amended, to the full Committee on Energy and Commerce, by a voice vote.

The full Committee met in open markup session, pursuant to notice, on November 20, 2019, to consider H.R. 2881, as amended by the Subcommittee. No amendments were offered to the bill during full Committee consideration and therefore, the Committee on Energy and Commerce agreed to a motion by Mr. Pallone, Chairman of the Committee, to order reported H.R. 2881 favorably to the House, as amended, by a voice vote, a quorum being present.

V. COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list each record vote on the motion to report legislation and amendments thereto. The Committee advises that there were no record votes taken on H.R. 2881.

VI. OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the oversight findings and recommendations of the Committee are reflected in the descriptive portion of the report.

VII. NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

VIII. 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.

IX. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII, the general performance goal or objective of this legislation is to require the President to develop a strategy to protect the security of 5G and future generations of wireless service.

X. DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII, no provision of H.R. 2881 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111-139 or the most recent Catalog of Federal Domestic Assistance.

XI. COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(1) of rule XIII, 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.

XII. EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

Pursuant to clause 9(e), 9(f), and 9(g) of rule XXI, the Committee finds that H.R. 2881 contains no earmarks, limited tax benefits, or limited tariff benefits.

XIII. ADVISORY COMMITTEE STATEMENT

The legislation does not create any new Federal advisory committee within the meaning of section 5(b) of the Federal Advisory Committee Act.

XIV. 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.

XV. SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 designates that the short title may be cited as the Securing 5G and Beyond Act of 2019”.

Sec. 2. Strategy to ensure security of next generation mobile telecommunications systems and infrastructure

Subsection (b) of section 2 directs the President to develop the “Secure Next Generation Mobile Communications Strategy” in consultation with the heads of the FCC, NTIA, DHS, DNI, and DOD. The Secure Next Generation Mobile Communications Strategy is intended to: (1) ensure the security of 5G communications systems and infrastructure in the United States; (2) assist mutual defense allies and strategic partners in maximizing the security of 5G networks and infrastructure in their countries; and (3) protect the competitiveness of U.S. companies, the privacy of American consumers, and the integrity of standards-setting bodies against political influence.

Subsection (d) includes several specific elements that shall be included in the Secure Next Generation Mobile Communications Strategy. Subsection (e) specifies that the strategy shall not include a recommendation or proposal to nationalize 5th, or future generations’ wireless communications systems or infrastructure, among other things. Subsection (f) requires the report to undergo a 60-day public comment period. Subsection (g) specifies that within 14 days of the required completion of the strategy that Congress be briefed on the strategy. Finally, subsection (h) stipulates that the NTIA shall be the executive agent to coordinate implementation of the strategy.

XVI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

This bill, as reported by the Committee, makes no changes to existing law.