

## ***The Preventing Unwarranted Communications Shutdowns Act***

The bipartisan *Preventing Unwarranted Communications Shutdowns Act* protects Americans from executive overreach and provides for robust Congressional oversight over emergency authorities in the Communications Act. The legislation limits presidential powers to control communications networks by adding commonsense guardrails to §706 of the Communications Act of 1934.<sup>1</sup> §706(d) authorizes the President to take control of “any facility or station for wire communication” during a state or threat of war, which many interpret as an ‘internet killswitch’ while other provisions confer additional powers.<sup>2</sup>

By design, the internet is decentralized and can’t be ‘shut down.’ However, §706 could allow an order requiring internet service providers to cease operations indefinitely, effectively shutting down access to the internet or other communications networks for Americans.

While emergency powers over communications networks have not been used in modern history,, it’s conceivable that the President may need such authority one day, especially as our infrastructure and the devices in our daily lives become more connected.<sup>3</sup> However, shutting down a communications network would be an extraordinary infringement of rights, and it should only be allowed in an extreme circumstance, and only with the consent of a supermajority the representatives of the people.

The *Preventing Unwarranted Communications Shutdowns Act* does the following:

- Limits the reasons the President may take action under §706 to ones necessary to protect against an imminent and specific threat to human life or national security if such action is narrowly tailored and is the least restrictive means for the purpose;
- Requires that the President notify congressional leaders (i.e., Speaker, House Minority Leader, and Senate Majority and Minority Leaders), senior executive branch officials (i.e., VP, department heads, intelligence community heads, Joint Chiefs of Staff), and the FCC before or not later than 12 hours after taking any action authorized under §706;
- Nullifies §706 orders 12 hours after issuance of the order if the President does not provide notification in the specified time and form;
- Nullifies §706 orders 48 hours after the President provides notice *unless* three-fifths of each of the House and the Senate vote to pass an approval resolution, with an affirmative vote of at least one-quarter of the minority party in each chamber (the 48 hour period may be extended with the consent of a consens of congressional leaders or their designees);
- Requires a GAO report after every §706 order, and requires a one-time GAO report estimating the impact of a communication shutdown; and
- Requires that the US government compensate providers and customers of providers for any communications shutdown under §706.

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<sup>1</sup> All references to section 706 (§706) in this document are references to §706 of the Communications Act of 1934, as amended (47 U.S.C. 606), and not §706 of the Telecommunications Act of 1996 (47 U.S.C. 1302).

<sup>2</sup> Subsections (a), (b), (c), and (d) of §706 confer emergency powers to the President. For a history and discussion of the provisions, see David W. Operdeck, “Does the Communications Act of 1934 Contain a Hidden Internet Kill Switch?,” *Federal Communications Law Journal* 65, no. 1 (January 2013), <http://www.fclj.org/wp-content/uploads/2013/01/65-1-operdeck.pdf> (“The Committee understands that [§706] gives the President the authority to take over wire communications in the United States and, if the President so chooses, shut a network down.” (quoting S. Rep. No. 111-368 (2010))).

<sup>3</sup> For a discussion of potential threats, see Bruce Schneier, *Click Here to Kill Everybody: Security and Survival in a Hyper-Connected World* (W. W. Norton & Company, 2018).