116TH CONGRESS  
2D SESSION  
H. R. _____

To amend the Communications Act of 1934 to provide for requirements for the exercise of the emergency powers of the President under section 706 of such Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Ms. Eshoo introduced the following bill; which was referred to the Committee on

A BILL

To amend the Communications Act of 1934 to provide for requirements for the exercise of the emergency powers of the President under section 706 of such Act, and for other purposes.

1 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Preventing Unwarranted Communications Shutdowns Act of 2020”.

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2 SEC. 2. REQUIREMENTS FOR EXERCISE OF CERTAIN EMERGENCY POWERS OF THE PRESIDENT.

(a) In General.—Section 706 of the Communications Act of 1934 (47 U.S.C. 606) is amended by adding at the end the following:

“(i) REQUIREMENTS FOR ACTIONS BY PRESIDENT UNDER THIS SECTION.—

“(1) STANDARD FOR TAKING ACTION.—The President may not take an action under subsection (a), (b), (c), or (d) unless such action is—

“(A) necessary to protect against an imminent and specific threat to human life or an imminent and specific threat to national security; 

“(B) narrowly tailored to achieve the purpose described in subparagraph (A); and

“(C) the least restrictive means to achieve such purpose.

“(2) NOTIFICATION TO CONGRESSIONAL LEADERS AND SENIOR GOVERNMENT OFFICIALS.—

“(A) In General.—Before or not later than 12 hours after taking any action under subsection (a), (b), (c), or (d), the President shall transmit a notification with respect to such action that meets the requirements of subparagraph (B) to each congressional leader and each senior Government official.
“(B) REQUIREMENTS.—The requirements of this subparagraph for a notification with respect to an action under subsection (a), (b), (c), or (d) are the following:

“(i) CONTENTS.—Such notification shall contain the following:

“(I) An identification of the war, threat of war, state of public peril, disaster, national emergency, or other circumstance that is the basis for the President to take such action, as required by the subsection under which the President has acted or wishes to act.

“(II) A detailed description of such action, including—

“(aa) the geographic scope of such action;

“(bb) the types of communications networks impacted by such action; and

“(cc) a list of each person to whom the President has transmitted a communication directing
such person to comply with such action.

“(III) The amount of time (if any) beyond the period of effectiveness provided in paragraph (3) for which the President is requesting authorization to maintain such action.

“(IV) A justification, with respect to such action and any amount of time stated under subclause (III), of how the President reached the determination required for taking an action under such subsection (including the determination that the requirements of paragraph (1) of this subsection are met).

“(ii) FORM.—Such notification shall be in writing. With respect to each congressional leader and each senior Government official, the President shall first transmit such notification to such leader or official in either physical or electronic form, whichever the President determines will result in quicker delivery to such leader or official. The President shall transmit
such notification to such leader or official in the other form as soon thereafter as possible, but failure to transmit such notification in such other form shall not affect the validity of the action by the President to which such notification relates.

“(iii) Timing.—

“(I) Congress.—

“(aa) In general.—The President shall transmit such notification in such a manner so as to ensure delivery to each congressional leader as close to simultaneously as practicable, but the time between delivery to each congressional leader shall not be greater than 1 hour.

“(bb) Official time received; publication.—Each congressional leader shall record the official time of the chamber at receipt. In the case of notification to a congressional leader in both physical and electronic form, the time recorded shall be
the time of receipt of the form that was received first. Each congressional leader shall, immediately upon such receipt, inform the Clerk of the House or the Secretary of the Senate (as the case may be) of the time of receipt, to be recorded and published by the Clerk or Secretary. 

“(cc) 48-HOUR PERIOD DEFINED.—In this subsection, the term ‘48-hour period’ means the 48-hour period that begins at the 3rd earliest of the 4 times recorded under item (bb), including any extension of such period under paragraph (4)(D) and excluding any period disregarded under paragraph (4)(C)(v). 

“(II) SENIOR GOVERNMENT OFFICIALS.—The President shall transmit such notification in such a manner so as to ensure delivery to each senior Government official not more than 1 hour after the 3rd earliest of
the 4 times recorded under subclause (I)(bb).

“(C) PUBLIC AVAILABILITY.—

“(i) PRESUMPTIVELY PUBLIC.—Except as provided in clause (ii), the President shall publicly release a notification transmitted under subparagraph (A) at the time when the 48-hour period begins.

“(ii) TEMPORARY WITHHOLDING AND RELEASE.—

“(I) WITHHOLDING.—The President may withhold from public release under clause (i) a portion of a notification transmitted under subparagraph (A) only to the extent that the President determines that—

“(aa) secrecy of such portion is necessary to protect against an imminent and specific threat to human life; or

“(bb) such portion contains classified information.

“(II) RELEASE.—Notwithstanding any provision of law or Executive order regarding the protection of
classified information, any portion of a notification transmitted under sub-
paragraph (A) that is withheld under subclause (I) shall be publicly released not later than 180 days after—

“(aa) if there is not enacted a law authorizing the action by the President under subsection (a), (b), (c), or (d) to which such notification relates to take effect or to be extended (as the case may be), the date on which the 48-hour period begins; or

“(bb) if there is enacted such a law, the date on which such action ceases to have any force or effect under such law (or any subsequent law authorizing such action to be extended).

“(D) INDEPENDENT ANALYSIS.—Cons-
sistent with the protection of intelligence sources and methods, each Commissioner of the Commission may transmit to Congress an independent analysis regarding any matter included in a notification transmitted by the President
under subparagraph (A) or related judgments
of the President or facts supplied by the Presi-
dent.

“(3) Effectiveness of Action.—Unless there is enacted a law authorizing an action by the President under subsection (a), (b), (c), or (d) to take effect or to be extended (as the case may be)—

“(A) if the President fails to transmit to each congressional leader and each senior Government official a notification with respect to such action as required by paragraph (2), such action shall cease to have any force or effect at the time that is 12 hours after the President takes such action; and

“(B) if the President transmits to each congressional leader and each senior Government official a notification with respect to such action as required by paragraph (2), such action shall cease to have any force or effect at, and may not take effect after, the end of the 48-hour period.

“(4) Procedures for Expedited Congressional Consideration.—

“(A) Fast Track Consideration in the House of Representatives.—
“(i) Reconvening.—Upon receipt of a notification under paragraph (2), the Speaker, if the House would otherwise be adjourned, shall notify the Members of the House that, pursuant to this paragraph, the House shall convene as soon as the Speaker deems practicable.

“(ii) Placement on Calendar.—Upon introduction in the House, the approval legislation shall be placed immediately on the calendar.

“(iii) Proceeding to Consideration.—It shall be in order at any time during the 48-hour period immediately to move to proceed to consider the approval legislation in the House. All points of order against the motion are waived. Such a motion shall not be in order after the House has disposed of a motion to proceed on the approval legislation. The previous question shall be considered as ordered on the motion to its adoption without intervening motion. The motion shall not be debatable. A motion to reconsider the vote by which
the motion is disposed of shall not be in order.

“(iv) CONSIDERATION.—The approval legislation shall be considered as read. All points of order against the approval legislation and against its consideration are waived. The previous question shall be considered as ordered on the approval legislation to its passage without intervening motion except two hours of debate equally divided and controlled by the proponent and an opponent. A motion to reconsider the vote on passage of the approval legislation shall not be in order.

“(B) FAST TRACK CONSIDERATION IN THE SENATE.—

“(i) RECONVENING.—Upon receipt of a notification under paragraph (2), if the Senate has adjourned or recessed for more than 2 days, the majority leader of the Senate, after consultation with the minority leader of the Senate, shall notify the Members of the Senate that, pursuant to this paragraph, the Senate shall convene
as soon as the majority leader deems practicable.

“(ii) Placement on Calendar.—
Upon introduction in the Senate, the approval legislation shall be placed immediately on the calendar.

“(iii) Floor Consideration.—
“(I) In general.—Notwithstanding Rule XXII of the Standing Rules of the Senate, it is in order at any time during the 48-hour period to move to proceed to the consideration of the approval legislation, and all points of order against the approval legislation (and against consideration of the legislation) are waived. The motion to proceed is not debatable. The motion is not subject to a motion to postpone. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the approval legislation is agreed to, the approval legislation
shall remain the unfinished business until disposed of.

“(II) CONSIDERATION.—Consideration of the approval legislation, and of all debatable motions and appeals in connection therewith, shall be limited to not more than 4 hours, which shall be divided equally between the majority and minority leaders or their designees. A motion further to limit consideration is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the approval legislation is not in order.

“(III) VOTE ON PASSAGE.—The vote on passage shall occur immediately following the conclusion of the debate on the approval legislation, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate.

“(IV) RULINGS OF THE CHAIR ON PROCEDURE.—Appeals from the
decisions of the Chair relating to the
application of the rules of the Senate,
as the case may be, to the procedure
relating to the approval legislation
shall be decided without debate.

“(C) Rules relating to Senate and
House of Representatives.—

“(i) Coordination with action by
other house.—If, before the passage by
one House of approval legislation of that
House relating to an action by the Presi-
dent under subsection (a), (b), (c), or (d),
that House receives from the other House
approval legislation relating to such action,
then the following procedures shall apply:

“(I) The approval legislation of
the other House shall not be referred
to a committee.

“(II) With respect to approval
legislation of the House receiving the
approval legislation from the other
House—

“(aa) the procedure in that
House shall be the same as if no
approval legislation had been received from the other House; but

“(bb) if—

“(AA) the approval legislation from the other House is identical to the approval legislation then pending for passage in that House, the vote on passage shall be on the approval legislation of the other House; or

“(BB) the approval legislation received from the other House is not identical to the approval legislation then pending for passage in that House and that House then passes the approval legislation of that House, that House shall be considered to have passed the approval legislation from the other House as amended by the
text of the approval legislation of that House.

“(ii) Treatment of Approval Legislation of Other House.—If one House fails to introduce or consider approval legislation relating to an action by the President under subsection (a), (b), (c), or (d), the approval legislation of the other House relating to such action shall be entitled to expedited floor procedures under this paragraph.

“(iii) Treatment of Companion Measures.—If, following passage of approval legislation relating to an action by the President under subsection (a), (b), (c), or (d) in the Senate, the Senate then receives approval legislation relating to such action from the House of Representatives, the approval legislation from the House of Representatives shall be entitled to expedited floor procedures under this paragraph except it shall not be debatable.

“(iv) Action on Message Between Houses.—During the consideration in the Senate or the House of Representatives of
a message between Houses on any approval legislation relating to an action by the President under subsection (a), (b), (c), or (d), and all amendments in disagreement, and all amendments thereto, and debatable motions and appeals in connection therewith, consideration shall be limited to 2 hours, to be equally divided between, and controlled by, the majority leader and minority leader or their designees. Consideration of any debatable motion or appeal related to the message shall be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the message.

“(v) Consideration after passage.—

“(I) In general.—If Congress passes approval legislation, the period beginning on the date the President is presented with the legislation and ending on the date the President takes action with respect to the legislation shall be disregarded in computing the 48-hour period.
“(II) VETOES.—If the President vetoes the approval legislation—

“(aa) the period beginning at the time the President vetoes the legislation and ending on the date the Congress receives the veto message with respect to the approval legislation shall be disregarded in computing the 48-hour period; and

“(bb) debate on a veto message in the Senate under this paragraph shall be 1 hour equally divided between the majority and minority leaders or their designees.

“(D) EXTENSION OF 48-HOUR PERIOD FOR EXIGENT CIRCUMSTANCES.—If either chamber is adjourned when the 48-hour period begins and cannot practicably reconvene in time to consider approval legislation in accordance with this subsection during the 48-hour period, and if all of the congressional leaders, or their designees, reach an agreement under which they, or their designees, determine that the action
under subsection (a), (b), (c), or (d) to which such notification relates is necessary to protect against an imminent and specific threat to human life or an imminent and specific threat to national security, and that the 48-hour period will be extended until such time as they, or their designees, consider practicable, such period shall be extended until such time. Such agreement shall be provided to the President, the Members of the House of Representatives and Senate, and each senior Government official.

“(E) SUPERMAJORITY REQUIRED.—In the Senate and the House of Representatives, the approval legislation may only be adopted (including in the case of adoption by one House of approval legislation received from the other House, with or without amendment) by an affirmative vote of not less than—

“(i) three-fifths of the Members of each respective chamber, duly chosen and sworn; and

“(ii) one-quarter of Members of each respective chamber who caucus with the
party that has the second-largest number
of Members of such chamber.

“(F) Rules of House of Representatives and Senate.—This paragraph is en-
acted by Congress—

“(i) as an exercise of the rulemaking
power of the Senate and House of Rep-
resentatives, respectively, and as such it is
deemed a part of the rules of each House,
respectively, but applicable only with re-
spect to the procedure to be followed in
that House in the case of approval legisla-
tion, and it supersedes other rules only to
the extent that it is inconsistent with such
rules; and

“(ii) with full recognition of the con-
stitutional right of either House to change
the rules (so far as relating to the proce-
dure of that House) at any time, in the
same manner, and to the same extent as in
the case of any other rule of that House.

“(5) Subsequent Actions.—If an action by
the President under subsection (a), (b), (c), or (d)
does not take effect or ceases to have any force or
effect as provided in this subsection, the same or a
substantially similar action by the President may not take effect unless—

“(A) there is enacted a law authorizing such same or substantially similar action; or

“(B) the basis for such same or substantially similar action is a war, threat of war, state of public peril, disaster, national emergency, or other circumstance that is completely separate and distinct from the circumstance that is the basis for the President to take the earlier action.

“(6) EARLIER TERMINATION BY PRESIDENT.—Nothing in this subsection may be construed to prohibit the President from providing that an action under subsection (a), (b), (c), or (d) shall cease to have any force or effect before the time provided in this subsection.

“(7) POST-HOC GAO REPORT.—

“(A) IN GENERAL.—Not later than 90 days after the President takes an action under subsection (a), (b), (c), or (d), the Comptroller General of the United States shall submit to Congress a report on such action.

“(B) CONTENTS.—A report required by subparagraph (A) shall assess—
“(i) the degree to which the President adhered to the requirements of this subsection, including the standard required by paragraph (1) for taking such an action; and

“(ii) the impact of the action taken by the President on—

“(I) civil liberties and civil rights, including any disproportionate impacts on marginalized communities;

“(II) public safety, including emergency services, emergency support services, and public safety answering points (as such terms are defined in section 222(h));

“(III) functions of Federal, State, Tribal, and local governments;

“(IV) the economy, including any projection of future or ongoing impacts;

“(V) communications facilities and the technical architecture of impacted communications networks (including the security of such facilities and networks); and
“(VI) private companies.

“(C) CONSULTATION.—In preparing a report required by subparagraph (A), the Controller General shall consult with relevant stakeholders.

“(D) UNCLASSIFIED FORM.—A report required by subparagraph (A) shall be submitted in unclassified form but may contain a classified annex.

“(8) DEFINITIONS.—In this subsection:

“(A) APPROVAL LEGISLATION.—The term ‘approval legislation’ means a joint resolution that—

“(i) does not contain a preamble;

“(ii) the matter after the resolving clause of which is as follows: ‘That Congress approves the action by the President under section 706 of the Communications Act of 1934 (47 U.S.C. 606) with respect to which the President transmitted a notification under subsection (i)(2) of such section on __________, and such action is authorized to be in effect through __________.’, the blank spaces being appropriately filled in; and
“(iii) is introduced during the 48-hour period.

“(B) CONGRESSIONAL LEADERS.—The term ‘congressional leaders’ means the Speaker and minority leader of the House of Representatives and the majority leader and minority leader of the Senate.

“(C) RELEVANT STAKEHOLDERS.—The term ‘relevant stakeholders’ means—

“(i) senior Government officials;

“(ii) the Under Secretary of Commerce for Standards and Technology;

“(iii) the Privacy and Civil Liberties Oversight Board;

“(iv) the congressional leaders; and

“(v) experts from academia, public interest organizations, and private industry with expertise in—

“(I) civil liberties and civil rights;

“(II) economics;

“(III) cybersecurity and network security;

“(IV) national security; and

“(V) telecommunications.
“(D) SENIOR GOVERNMENT OFFICIAL.—

The term ‘senior Government official’ means—

“(i) the Vice President;

“(ii) the head of each Executive department (as defined in section 101 of title 5, United States Code);

“(iii) each Commissioner of the Commission;

“(iv) the head of each element of the intelligence community (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 3003)); and

“(v) each member of the Joint Chiefs of Staff.

“(j) LIABILITY.—No person shall be held criminally or civilly liable for any action taken to comply with an action taken by the President under subsection (a), (b), (c), or (d), if—

“(1) the action by the President is taken in accordance with this section and any other applicable provision of law; and

“(2) any service disrupted by the action of such person is restored as soon as reasonably feasible after the action by the President ceases to have any
force or effect in accordance with this section and any other applicable provision of law.”.

(b) **O**NE-TIME **GAO** **R**EPORT.—

(1) **I**N **G**ENERAL.—Not later than 6 months after the date of the enactment of this Act, the Comptroller General of the United States shall submit to Congress a report that predicts the impact of a communications shutdown, partial or complete, as provided for in subsection (a), (b), (c), or (d) of section 706 of the Communications Act of 1934 (47 U.S.C. 606) or any other law, regulation, Executive order, or document of the Federal Government, on—

(A) civil liberties and civil rights, including any disproportionate impacts on marginalized communities;

(B) national security;

(C) public safety, including emergency services, emergency support services, and public safety answering points (as such terms are defined in section 222(h) of the Communications Act of 1934 (47 U.S.C. 222(h)))

(D) functions of Federal, State (as defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153)), Tribal, and local governments;
(E) the economy, including any projection of future or ongoing impacts;

(F) communications facilities and the technical architecture of impacted communications networks (including the security of such facilities and networks); and

(G) private companies.

(2) CONSULTATION.—In preparing the report required by paragraph (1), the Comptroller General shall, to the degree practicable, consult with relevant stakeholders (as defined in paragraph (8) of subsection (i) of section 706 of the Communications Act of 1934, as added by subsection (a) of this section).

(3) UNCLASSIFIED FORM.—The report required by paragraph (1) shall be submitted in unclassified form but may contain a classified annex.

(4) COMMUNICATIONS SHUTDOWN DEFINED.—In this subsection, the term “communications shutdown” has the meaning given such term in paragraph (6) of subsection (e) of section 706 of the Communications Act of 1934, as amended by subsection (c).

(e) JUST COMPENSATION AND COSTS TO CUSTOMERS.—
(1) IN GENERAL.—Subsection (e) of section 706 of the Communications Act of 1934 (47 U.S.C. 606) is amended to read as follows:

“(e)(1) The President shall ascertain—

“(A) the just compensation for use or control under subsection (c) or (d); and

“(B) the cost of any harm to the customers of a provider of communications by wire or radio caused by an action by the President under subsection (a), (b), (c), or (d) that results in a partial or complete communications shutdown.

“(2)(A) The President shall certify the amounts ascertained under paragraph (1) to Congress for appropriation and payment to the person entitled thereto.

“(B) In the case of the cost of harm to the customers of a provider, the person entitled to payment under subparagraph (A) shall be such provider. Such provider shall, not later than 60 days after receiving payment, pay such amount to the customers who were harmed.

“(3) If an amount certified under paragraph (2) is unsatisfactory to the person entitled thereto, such person shall be paid only 75 percent of the amount and shall be entitled to sue the United States to recover such further sums as added to such payment of 75 percent will make such amount as will be just compensation described in
paragraph (1)(A) or the cost of any harm described in
paragraph (1)(B), as the case may be. Such suit shall be
brought in the manner provided by section 1346 or section
1491 of title 28, United States Code.

“(4) The Commission shall promulgate regulations
that contain—

“(A) a methodology for ascertaining the cost of
harm under paragraph (1)(B); and

“(B) a methodology that a provider of commu-
ications shall use to determine how much of the
amount required by paragraph (2)(B) to be paid to
customers of such provider who were harmed shall
be paid to each such customer.

“(5) A provider of communications by wire or radio
may not charge a customer for reactivating, reconnecting,
or taking any similar action with respect to any service
or connection impacted by an action by the President
under subsection (a), (b), (c), or (d).

“(6) In this subsection, the term ‘communications
shutdown’ means an intentional disruption of internet or
other communications by wire or radio rendering such
communications inaccessible or effectively unusable, for a
specific population or within a specific location (which may
include the entire population of the United States or the
etire territory of the United States).”.
(2) DEADLINE FOR REGULATIONS.—The Federal Communications Commission shall promulgate the regulations required by paragraph (4) of subsection (e) of section 706 of the Communications Act of 1934, as amended by paragraph (1), not later than 180 days after the date of the enactment of this Act.

(d) CONFORMING AMENDMENTS.—Section 706 of the Communications Act of 1934 is further amended—

(1) in the second sentence of subsection (a), by inserting “(subject to subsection (i))” after “determine”;

(2) in the first sentence of subsection (c), by inserting “(subject to subsection (i))” after “as he may see fit”; and

(3) in subsection (d), by striking “and not later than such earlier date as the Congress by concurrent resolution may designate” and inserting “(but subject to subsection (i) with respect to any particular action under this subsection during such period)”.

(e) RULE OF CONSTRUCTION.—This section and the amendments made by this section shall not be construed to expand Presidential authorities existing as of the day before the date of the enactment of this Act.