

SMALL BUSINESS BROADBAND DEPLOYMENT ACT

MARCH 7, 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. 4596]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 4596) to ensure that small business providers of broadband Internet access service can devote resources to broad band deployment rather than compliance with cumbersome regulatory requirements, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Small Business Broadband Deployment Act”.

SEC. 2. EXCEPTION TO ENHANCEMENT TO TRANSPARENCY REQUIREMENTS FOR SMALL BUSINESSES.

(a) **IN GENERAL.**—The enhancements to the transparency rule of the Federal Communications Commission under section 8.3 of title 47, Code of Federal Regulations, as described in paragraphs 162 through 184 of the Report and Order on Remand, Declaratory Ruling, and Order of the Federal Communications Commission with regard to protecting and promoting the open Internet (adopted February 26, 2015) (FCC 15–24), shall not apply to any small business.

(b) **SUNSET.**—Subsection (a) shall not have any force or effect after the date that is 5 years after the date of the enactment of this Act.

(c) **REPORT BY FCC.**—Not later than 180 days after the date of the enactment of this Act, the Federal Communications Commission shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report that contains the recommendations of the Commission (and data supporting such recommendations) regarding—

(1) whether the exception provided by subsection (a) should be made permanent; and

(2) whether the definition of the term “small business” for purposes of such exception should be modified from the definition in subsection (d)(2).

(d) **DEFINITIONS.**—In this section:

(1) **BROADBAND INTERNET ACCESS SERVICE.**—The term “broadband Internet access service” has the meaning given such term in section 8.2 of title 47, Code of Federal Regulations.

(2) **SMALL BUSINESS.**—The term “small business” means any provider of broadband Internet access service that has not more than 250,000 subscribers.

PURPOSE AND SUMMARY

H.R. 4596, the Small Business Broadband Deployment Act, extends by five years the temporary exemption granted to small businesses by the Federal Communications Commission (FCC) from the enhanced disclosure requirements of the Open Internet Order.

The legislation also defines a small business, for purposes of the bill, as a provider of broadband Internet access service with not more than 250,000 subscribers. In addition, the legislation requires the FCC to submit a report to Congress within 180 days detailing whether the exemption should be made permanent and whether the definition of small business adopted in this bill should be modified.

BACKGROUND AND NEED FOR LEGISLATION

As part of the Federal Communications Commission’s Open Internet Order, the Commission adopted enhancements to the 2010 disclosure requirements for Internet service providers (ISP), including in the required disclosures information such as promotional rates, pricing, and performance characteristics such as packet loss. Recognizing the burden that these enhanced disclosures could place on small businesses, the FCC temporarily exempted small ISPs with 100,000 or fewer subscribers from these disclosures. This exemption covered only the enhanced disclosure requirements from the 2015 Order, leaving in place the transparency requirements adopted as part of the 2010 Open Internet Order, which subsequently survived the court challenge to the rules.

In November 2015, Republican members of the Subcommittee on Communications and Technology and Republican members of the Small Business Committee wrote a letter to Chairman Wheeler, urging him to make the exemption permanent and to expand the definition of small business to better reflect the definitions adopted

by the Small Business Administration (SBA) and those used by the FCC and approved by the SBA in the past. Specifically, the members urged the FCC to set the threshold at telecommunications carriers with fewer than 1,500 employees or 500,000 subscribers.

Shortly before the December 2015 expiration of the temporary exemption, the FCC extended it until December 2016. The original draft of this legislation would have made the exemption permanent, seeking to provide certainty and regulatory relief to small ISPs who lack the resources to comply with the enhanced disclosure requirements. During the Subcommittee markup, members agreed to continue to work toward a bipartisan amendment that would provide certainty to small businesses while protecting consumers. While members agreed that small businesses needed protection, there was some disagreement as to the appropriate threshold for defining a small business. The final legislation reflects the bipartisan compromise that relieves regulatory burdens for small ISPs, encourages greater deployment and investment by these providers, and still protects consumers.

HEARINGS

The Subcommittee on Communications and Technology held a hearing on a discussion draft of the Small Business Broadband Deployment Act, on January 12, 2016. Former FCC Commissioner Robert McDowell, Elizabeth Bowles of the Wireless Internet Service Providers Association, and Harold Feld of Public Knowledge provided testimony.

COMMITTEE CONSIDERATION

On February 10 and 11, 2016, the Subcommittee on Communications and Technology met in open markup session and forwarded a discussion draft entitled “Small Business Broadband Deployment Act” without amendment, to the full Committee by a voice vote.

Chairman Walden introduced H.R. 4596 on February 24, 2016. H.R. 4596 was identical to the discussion draft forwarded by the Subcommittee.

On February 24 and 25, 2016, the full Committee on Energy and Commerce met in open markup session, where Chairman Walden and Congressman Loebsack offered an amendment to the bill to include a five-year extension of the exemption, an FCC report requirement, and a revised definition of small business. The amendment was adopted and the Committee ordered H.R. 4596 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. A motion by Mr. Upton to order H.R. 4596 reported to the House, as amended, was agreed to by a voice vote. No recorded votes were taken on this legislation.

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

The goal and objective of H.R. 4596 is to provide relief from regulatory burdens and greater certainty to small businesses providing broadband Internet access service.

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. 4596 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. 4596 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.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 4, 2016.

Hon. FRED UPTON,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4596, the Small Business Broadband Deployment Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Kathleen Gramp.

Sincerely,

KEITH HALL.

Enclosure.

H.R. 4596—Small Business Broadband Deployment Act

H.R. 4596 would modify certain regulatory policies adopted by the Federal Communications Commission (FCC) regarding the obligation of small broadband providers to give consumers information

about the performance and cost of their services. Under the FCC's current rules, broadband providers with 100,000 or fewer subscribers are exempt from certain reporting requirements until December 16, 2016, at which time the Commission plans to adopt final regulations on those requirements. H.R. 4596 would apply the exemption to providers with 250,000 or fewer subscribers and would keep the exemption in place for five years after the date of enactment. Finally, the bill would direct the FCC to submit recommendations to the Congress on those policies within six months of enactment.

Based on information from the FCC, CBO estimates that the rulemaking activities needed to implement the provisions of H.R. 4596 would not have a significant effect on the agency's costs relative to current policies. Moreover, under current law, the FCC is authorized to collect fees sufficient to offset the cost of its regulatory activities each year. Therefore, CBO estimates that the net cost to implement H.R. 4596 would be negligible, assuming annual appropriation actions consistent with the agency's authorities. Because enacting H.R. 4596 would not affect direct spending or revenues, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 4596 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

H.R. 4596 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Kathleen Gramp. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

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. 4596 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. 4596 does not direct any rule making within the meaning of 5 U.S.C. 551, as specified in Section 2(a).

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 “Small Business Broadband Deployment Act.”

Section 2. Exception to enhancement to transparency requirements for small businesses

Section 2(a). Section 2(a) exempts small businesses from the enhancements to the transparency rules described in the FCC’s Order protecting and promoting the open Internet, adopted February 26, 2015.

Section 2(b). Section 2(b) creates a sunset for the exemption, five years after the date of enactment of this Act. The sunset is intended to create a trigger for a reconsideration of the exemption by Congress in five years, when more data regarding the exemption is available. This includes the findings of the FCC’s report to Congress, required by this legislation, as well as data provided by broadband Internet access service providers. By creating a sunset, Congress is able to determine the appropriate extension of the exemption as well as the appropriate threshold for defining a small business. As this bill was drafted with the goal of creating certainty for small businesses seeking to make long term operational decisions, as well as to relieve regulatory burdens and encourage deployment and innovation by small businesses, the Congress should keep all of the above factors in mind when considering the appropriate action at the time of the five year sunset. While some members preferred to make the exemption permanent, a five year extension allows for extensive data collection, addressing the concerns of members who had reservations about the availability of data for defining a small business.

Section 2(c). This section requires that the FCC submit a report to the relevant Committees of Congress within 180 days of enactment of this Act that contains their recommendations, and any supporting data for those recommendations, regarding whether this exemption should be made permanent, and whether the definition adopted is appropriate. As noted, this data is intended to aid Congress in future determinations of extending this exemption. The FCC’s existing proceeding and resulting record on the exemption for small businesses should be a resource for the Commission in drafting this report. This legislation also does not preclude the FCC from making the exemption permanent through its own proceeding.

Section 2(d). Section 2(d) defines “broadband Internet access service” and “small business.” The bill adopts the meaning given to the term broadband Internet access service in section 8.2 of title 47 of the Code of Federal Regulations, which is the codification of the definitions adopted in the FCC’s Open Internet Order. The bill defines small business as any provider of broadband Internet access service that has not more than 250,000 subscribers.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED
This legislation does not amend any existing Federal statute.

