

103^D CONGRESS
1ST SESSION

S. 237

To create the National Network Security Board as an independent government agency, located within the Federal Communications Commission, to promote telecommunications network security and reliability by conducting independent network outage investigations and by formulating security improvement recommendations.

IN THE SENATE OF THE UNITED STATES

JANUARY 27 (legislative day, JANUARY 5), 1993

Mr. PRESSLER introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To create the National Network Security Board as an independent government agency, located within the Federal Communications Commission, to promote telecommunications network security and reliability by conducting independent network outage investigations and by formulating security improvement recommendations.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “National Network Se-
5 curity Board Act of 1993”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds that—

3 (1) telecommunications networks constitute an
4 essential infrastructure for the Nation's economy
5 and security;

6 (2) in the past several years there have been a
7 significant number of severe network outages that
8 each temporarily left millions of United States tele-
9 phone customers without telephone service;

10 (3) there has been no comprehensive study of
11 the security of the network or its vulnerability to
12 disruptions caused by technical failure, accident, or
13 sabotage;

14 (4) self-investigation of network outages is not
15 adequate for ensuring the security of our public
16 switched network;

17 (5) there is no official mechanism for inves-
18 tigating network crashes and making recommenda-
19 tions for actions to prevent future outages;

20 (6) telecommunications network outages present
21 a serious public safety danger;

22 (7) there is a need for an independent govern-
23 ment agency, located within the Federal Commu-
24 nications Commission, to promote telecommuni-
25 cations security and reliability by conducting inde-

1 President, by and with the advice and consent of the Sen-
2 ate. No more than 3 members of the Board shall be of
3 the same political party. At any given time, no less than
4 3 members of the Board shall be individuals who have
5 been appointed on the basis of technical qualification, pro-
6 fessional standing, and who have demonstrated knowledge
7 in the fields of telecommunications network management,
8 telecommunications network engineering, or communica-
9 tion common carrier regulation.

10 (2) The terms of office of members of the Board shall
11 be 5 years, except as otherwise provided in this paragraph.
12 Any individual appointed to fill a vacancy occurring on
13 the Board prior to the expiration of the term of office for
14 which his predecessor was appointed shall be appointed
15 for the remainder of that term. Upon the expiration of
16 his term of office, a member shall continue to serve until
17 his successor is appointed and shall have qualified. Any
18 member of the Board may be removed by the President
19 for inefficiency, neglect of duty, or malfeasance in office.

20 (3) On or before January 1, 1994 (and thereafter as
21 required), the President shall—

22 (A) designate, by and with the advice and con-
23 sent of the Senate, an individual to serve as the
24 Chairman of the Board; and

25 (B) an individual to serve as Vice Chairman.

1 (4) The Chairman and Vice Chairman of the Board
2 each shall serve for a term of 2 years. The Chairman shall
3 be the chief executive and shall be responsible for the ad-
4 ministrative functions of the Board with respect to the ap-
5 pointment and supervision of personnel of the Board; the
6 distribution of business among such personnel and among
7 any administrative units of the Board; and the use and
8 expenditure of funds. The Vice Chairman shall act as
9 Chairman in the event of the absence or incapacity of the
10 Chairman or in case of a vacancy in the office of Chair-
11 man. The Chairman or acting chairman shall be governed
12 by the general policies established by the Board, including
13 any decisions, findings, determinations, rules, regulations,
14 and formal resolutions.

15 (5) Three members of the Board shall constitute a
16 quorum for the transaction of any function of the Board.

17 (6) The Board shall establish and maintain distinct
18 and appropriately staffed bureaus, divisions, or offices to
19 investigate and report on network outages involving each
20 of the following networks: (A) long distance, and (B) local
21 exchange.

22 (b) GENERAL.—(1) The General Services Adminis-
23 tration shall furnish the Board with such offices, equip-
24 ment, supplies, and services as it is authorized to furnish

1 to any other agency or instrumentality of the United
2 States.

3 (2) The Board shall have a seal which shall be judi-
4 cially recognized.

5 (3) Subject to the civil service and classification laws,
6 the Board is authorized to select, appoint, employ, and
7 fix the compensation of such officers and employees, in-
8 cluding investigators, attorneys, and administrative law
9 judges, as shall be necessary to carry out its powers and
10 duties under this Act.

11 **SEC. 4. GENERAL PROVISIONS.**

12 (a) DUTIES OF BOARD.—The Board shall—

13 (1) investigate or cause to be investigated (in
14 such detail as the Board shall prescribe), and deter-
15 mine the facts, conditions, and circumstances and
16 the cause or probable cause or causes of any long
17 distance network outage or local exchange network
18 outage. Any investigation of network outage con-
19 ducted by the Board shall have priority over all
20 other investigations of such network outage con-
21 ducted by other Federal agencies. The Board shall
22 provide for the appropriate participation by other
23 Federal agencies in any such investigation, except
24 that such agencies may not participate in the
25 Board's determination of the probable cause of the

1 network outage. Nothing in this section shall be con-
2 strued as impairing the authority of other Federal
3 agencies to conduct investigation of a network out-
4 age under applicable provisions of law or to obtain
5 information directly from parties involved in, and
6 witnesses to, the network outage. The Board and
7 other Federal agencies shall assure that appropriate
8 information obtained or developed in the course of
9 their investigations is exchanged in a timely manner.
10 The Board may request the Chairman of the Fed-
11 eral Communications Commission to make investiga-
12 tions with regard to such network outage and to re-
13 port to the Board the facts, conditions, and cir-
14 cumstances thereof (except in accidents where mis-
15 feasance or nonfeasance by the Federal Government
16 is alleged), and the Chairman of the Commission or
17 his delegates are authorized to make such investiga-
18 tions. Thereafter, the Board, utilizing such reports,
19 shall make its determination of cause or probable
20 cause under this paragraph;

21 (2) report in writing on the facts, conditions,
22 and circumstances of each network outage inves-
23 tigated pursuant to paragraph (1) of this subsection
24 and cause such reports to be made available, upon
25 request, to the public at reasonable cost;

1 (3) issue periodic reports to the Congress, Fed-
2 eral, State, and local agencies concerned with tele-
3 communications network security, and other inter-
4 ested persons recommending and advocating mean-
5 ingful responses to reduce the likelihood of recur-
6 rence of network outages similar to those inves-
7 tigated by the Board and proposing corrective steps;

8 (4) initiate and conduct special studies and spe-
9 cial investigations on matters pertaining to tele-
10 communications network security and reliability; and

11 (5) assess and reassess techniques and methods
12 of network outage investigation and prepare and
13 publish from time to time recommended procedures
14 for network outage investigations.

15 (b) POWERS OF BOARD.—(1) The Board, or upon the
16 authority of the Board, any member thereof, any adminis-
17 trative law judge employed by or assigned to the Board,
18 or any officer or employee duly designated by the Chair-
19 man of the Board, may, for the purpose of carrying out
20 this Act, hold such hearings, sit and act at such times
21 and places, administer such oaths, and require by sub-
22 poena or otherwise the attendance and testimony of such
23 witnesses and the production of such evidence as the
24 Board or such officer or employee deems advisable. Sub-
25 poenas shall be issued under the signature of the Chair-

1 man, or his delegate, and may be served by any person
2 designated by the Chairman. Witnesses summoned to ap-
3 pear before the Board shall be paid the same fees and
4 mileage that are paid witnesses in the United States
5 courts. Such attendance of witnesses and production of
6 evidence may be required from any place in the United
7 States to any designated place of such hearing in the Unit-
8 ed States.

9 (2) Any employee of the Board, upon presenting ap-
10 propriate credentials and a written notice of inspection au-
11 thority, is authorized to enter any property wherein a net-
12 work outage has occurred and do all things therein nec-
13 essary for a proper investigation, including examination
14 or testing of any communications equipment or any part
15 of any such item when such examination or testing is de-
16 termined to be required for purposes of such investigation.
17 Any examination or testing shall be conducted in such
18 manner so as not to interfere with or obstruct unneces-
19 sarily the communication services provided by the owner
20 or operator of such equipment, and shall be conducted in
21 such a manner so as to preserve, to the maximum extent
22 feasible, any evidence relating to the network outage, con-
23 sistent with the needs of the investigation and with the
24 cooperation of such owner or operator. The employee may
25 inspect, at reasonable times, records, files, papers, proc-

1 esses, controls, and facilities relevant to the investigation
2 of such network outage. Each inspection, examination, or
3 test shall be commenced and completed with reasonable
4 promptness and the results of such inspection, examina-
5 tion, or test made available as provided by the Board. The
6 Board shall have sole authority to determine the manner
7 in which testing will be carried out under this paragraph,
8 including determining the persons who will conduct the
9 test, the type of test which will be conducted, and the per-
10 sons who will witness the test. Such determinations are
11 committed to the discretion of the Board and shall be
12 made on the basis of the needs of the investigation being
13 conducted by the Board and, where applicable, the provi-
14 sions of this paragraph.

15 (3) In case of contumacy or refusal to obey a sub-
16 poena, an order, or an inspection notice of the Board, or
17 of any duly designated employee thereof, by any person
18 who resides, is found or transacts business within the ju-
19 risdiction of any United States district court, such district
20 court shall, upon the request of the Board, have jurisdic-
21 tion to issue to such person an order requiring such person
22 to comply forthwith. Failure to obey such an order is pun-
23 ishable by such court as a contempt of court.

24 (4) The Board is authorized to enter into, without
25 regard to section 3709 of the Revised Statutes of the Unit-

1 ed States (41 U.S.C. 5), such contracts, leases, coopera-
2 tive agreements, or other transactions as may be necessary
3 in the conduct of the functions and the duties of the Board
4 under this Act, with any government entity or any person.

5 (5) The Board is authorized, with the approval of the
6 appropriate Federal agency, to—

7 (A) use, on a reimbursable basis or otherwise,
8 when appropriate, available services, equipment, per-
9 sonnel, and facilities of the Federal Communications
10 Commission and of any other Federal agencies;

11 (B) with the approval of the appropriate gov-
12 ernmental agency of a State, or political subdivision
13 thereof, confer with employees and use available
14 services, records, and facilities of such governmental
15 agency;

16 (C) employ experts and consultants in accord-
17 ance with section 3109 of title 5 of the United
18 States Code;

19 (D) appoint 1 or more advisory committees
20 composed of qualified private citizens or officials of
21 Federal, State, or local governments as it deems
22 necessary or appropriate, in accordance with the
23 Federal Advisory Committee Act;

24 (E) accept voluntary and uncompensated serv-
25 ices notwithstanding any other provision of law;

1 (F) accept gifts or donations of money or prop-
2 erty (real, personal, mixed, tangible, or intangible);

3 (G) enter into contracts with public or private
4 nonprofit entities for the conduct of studies related
5 to any of its functions; and

6 (H) require payment or other appropriate con-
7 sideration from Federal agencies, State, local, and
8 foreign governments for the reasonable cost of goods
9 and services supplied by the Board and to retain and
10 use such funds received in carrying out the functions
11 of the Board.

12 (6) Whenever the Board submits or transmits any
13 budget estimate, budget request, supplemental budget es-
14 timate, or other budget information, legislative rec-
15 ommendation, prepared testimony for congressional hear-
16 ings, or comment on legislation to the President or to the
17 Office of Management and Budget, it shall concurrently
18 transmit a copy thereof to the Congress. No officer or
19 agency of the United States shall have any authority to
20 require the Board to submit its budget requests or esti-
21 mates, legislative recommendations, prepared testimony
22 for congressional hearings, or comments on legislation to
23 any officer or agency of the United States for approval,
24 comments, or review, prior to the submission of such rec-
25 ommendations, testimony, or comments to the Congress.

1 (7) The Board is authorized to designate representa-
2 tives to serve or assist on such committees as the Chair-
3 man of the Board determines to be necessary or appro-
4 priate to maintain effective liaison with other Federal
5 agencies, and, with their approval, with State and local
6 government agencies, and with independent standard-set-
7 ting bodies carrying out programs and activities related
8 to telecommunications network security.

9 (8) The Board, or an employee of the Board duly des-
10 igned by the Chairman, may conduct an inquiry to se-
11 cure data with respect to any matter pertinent to tele-
12 communications network security upon publication of no-
13 tice of such inquiry in the Federal Register; and may re-
14 quire, by special or general orders, Federal agencies and
15 persons engaged in activities related to telecommuni-
16 cations network security, and in the case of an agency of
17 a State or political subdivision thereof, to request such
18 agency, to submit written reports and answers to such re-
19 quests and questions as are propounded with respect to
20 any matter pertinent to any function of the Board. Such
21 reports and answers shall be submitted to the Board or
22 to such employee within such reasonable period of time
23 and in such form as the Board may determine. Copies
24 thereof shall be made available for inspection by the pub-
25 lic.

1 (9) The Board may at any time utilize on a reimburs-
2 able basis the services of the Field Operations Bureau of
3 the Federal Communications Commission or any successor
4 organization. The Chairman of the Federal Communica-
5 tions Commission shall make available the services of such
6 Bureau or successor organization—

7 (A) to the Board for training of employees of
8 the Board in the performance of all of their author-
9 ized functions, and

10 (B) to such other personnel of Federal, State,
11 local, and foreign governments and nongovernmental
12 organizations as the Board may from time to time
13 designate, in consultation with the Chairman of the
14 Federal Communications Commission. Utilization of
15 such training at the Bureau or successor organiza-
16 tion by designated non-Federal telecommunications
17 network security personnel shall be at a reasonable
18 fee to be established periodically by the Board in
19 consultation with the Chairman of the Board. Such
20 fee shall be paid directly to the Chairman for the
21 credit of the proper appropriation, subject to the re-
22 quirements of any annual appropriation, and shall
23 be an offset against any annual reimbursable agree-
24 ment entered into between the Board and the Chair-
25 man of the Federal Communications Commission to

1 cover all reasonable direct and indirect costs in-
2 curred for all such training by the Chairman in the
3 administration and operation of the Bureau or suc-
4 cessor organization. The Board shall maintain an
5 annual record of all such offsets. In providing such
6 training to Federal employees, the Board shall be
7 subject to chapter 41 of title 5 of the United States
8 Code (relating to training of employees).

9 **SEC. 5. PUBLIC ACCESS TO INFORMATION.**

10 Copies of any communication, document, investiga-
11 tion, other report, or information received or sent by the
12 Board, or any member or employee of the Board, shall
13 be made available to the public upon request, and at rea-
14 sonable cost. Nothing contained in this section shall be
15 deemed to require the release of any information described
16 by subsection (b) of section 552 of title 5, United States
17 Code, or which is otherwise protected by law from disclo-
18 sure to the public.

19 **SEC. 6. RESPONSE TO BOARD RECOMMENDATIONS.**

20 (a) CHAIRMAN'S DUTY TO RESPOND; CONTENTS OF
21 RESPONSE; PUBLICATION; PUBLIC AVAILABILITY OF
22 COPIES.—

23 (1) Whenever the Board submits a rec-
24 ommendation regarding network outages to the
25 Chairman of the Federal Communications Commis-

1 sion, he shall respond to each such recommendation
2 formally and in writing not later than 90 days after
3 receipt thereof. The response to the Board by the
4 Chairman shall indicate his intention to—

5 (A) initiate and conduct procedures for
6 adopting such recommendation in full, pursuant
7 to a proposed timetable, a copy of which shall
8 be included;

9 (B) initiate and conduct procedures for
10 adopting such recommendation in part, pursu-
11 ant to a proposed timetable, a copy of which
12 shall be included. Such response shall set forth
13 in detail the reasons for the refusal to proceed
14 as to the remainder of such recommendation; or

15 (C) refuse to initiate or conduct procedures
16 for adopting such recommendation. Such re-
17 sponse shall set forth in detail the reasons for
18 such refusal.

19 (2) The Board shall make copies of each such
20 recommendation and response thereto available,
21 upon request, to the public at reasonable cost.

22 (b) ANNUAL REPORT TO CONGRESS.—The Chairman
23 shall submit a report to the Congress on January 1 of
24 each year setting forth all the Board's recommendations
25 to the Chairman during the preceding year regarding tele-

1 communications network security and a copy of the Chair-
2 man's response to each such recommendation.

3 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

4 For fiscal year 1994, and each of the next following
5 3 fiscal years, there are authorized to be appropriated
6 such sums as may be necessary to carry out the provisions
7 of this Act, but in no event to exceed \$10,000,000 in any
8 1 fiscal year.

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