

DHS emergency power extended, including control of private telecom systems

By [Shaun Waterman](#)

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The [Obama administration](#) has given the [Department of Homeland Security](#) powers to prioritize government communications over privately owned telephone and Internet systems in emergencies.

An executive order signed June 6 “gives [DHS](#) the authority to seize control of telecommunications facilities, including telephone, cellular and wireless networks, in order to prioritize government communications over private ones in an emergency,” said [Amie Stephanovich](#), a lawyer with the [Electronic Privacy Information Center \(EPIC\)](#).

The [White House](#) says Executive Order 13618, published Wednesday in the Federal Register, is designed to ensure that the government can communicate during major disasters and other emergencies and contains no new authority.

“The [order] recognizes the creation of [DHS](#) and provides the Secretary the flexibility to organize the communications systems and functions that reside within the [department](#) as [she] believes will be most effective,” [White House](#) spokeswoman [Caitlin Hayden](#) said in an email. “The [order] does not transfer authorities between or among departments.”

She said the order replaced one originally signed in 1984 by President [Reagan](#) and amended in 2003 by President [George W. Bush](#) after [DHS](#) was set up and took responsibility for emergency response and communications.

When the original order “was written during the Cold War, the motivating national security concern was maintaining communications capability following a devastating nuclear strike,” [Ms. Hayden](#) said.

The new order “address[es] a world in which our economy and government are far more reliant on communications technologies to maintain essential functions than we were then,” she wrote.

At issue is a provision of the four-page order that says Homeland Security Secretary [Janet A. Napolitano](#) “shall ... satisfy [federal] priority communications requirements through the use of commercial, government, and privately owned communications resources.”

“The previous orders did not give [DHS](#) those authorities over private and commercial networks,” Ms. Stepanovich said. “That’s a new authority.”

“This should have been done by Congress, so there could have been proper debate about it,” she added. “This is not authority that should be granted by executive order.”

[Ms. Hayden](#) said the legal basis for the order is Section 706 of the 1934 Communications Act. The section authorizes the president to “cause the closing of any facility or station for wire communication” and gives him “control of any such facility or station” if a state of war, or the threat of one, exists.

The new order “extends Section 706 powers to the Internet,” said James Harper, an electronic-privacy advocate at the Cato Institute, a libertarian think tank.

The authorities “might have made sense in the 1930s,” but now the communication networks are too complex and interdependent, he said. “If you try to seize control of the Internet that way, you will break it.”

Under the previous executive orders, communications providers have long established priority access programs for federal users. In the telephone system, a special code the user inputs before dialing a number automatically tells the phone companies’ equipment to give the call priority.

“Mobile phones, the Internet, and social media are all now integral to the communications landscape,” [Ms. Hayden](#) said.