

Opening Statement of Chairman Fred Upton Communications and Technology Subcommittee Hearing on H.J. Res 37

I urge my colleagues to support H.J.Res. 37 nullifying the FCC's attempt to regulate the Internet. President Obama has said it is now his priority to focus on jobs; he has also said his administration will avoid onerous and unnecessary regulations that stifle investment and innovation. In fact, in a January 18, 2011, Executive Order, the President said that agencies must base regulations on a reasoned determination that their benefits justify their costs. While the executive order does not apply to independent agencies, the President urged such agencies to follow it, and FCC Chairman Genachowski has said he agrees with the order's principles.

If the FCC had taken this approach for the last year, we might not have needed this resolution today. The reality is, if the FCC was truly weighing the costs and benefits of its actions, the agency would not be attempting to regulate the Internet.

There is no crisis warranting intervention. The Internet is open and thriving precisely because we have refrained from regulating it. Imposing these rules will cause more harm than good by chilling the very investment and innovation we need to ensure the Internet keeps pace with the growing demands being placed on it. This will only hurt our economy.

The Internet is not broken; the market has not failed. To justify its power grab for a favored sector, the FCC is simply speculating about the possibility of future harm. Apparently they have never heard the old phrase 'if it ain't broke, don't fix it.' In fact, let's go one step further. As the late James Quello, who served as a Democratic FCC Commissioner, said: 'If it ain't broke, *don't break it.*'

The FCC actually confesses in the order—albeit in the footnotes—that it did not conduct a market analysis. Where is the rigorous cost benefit analysis and demonstration of need? We've reviewed their response to our follow-up and, quite frankly, it is lacking. They point to paragraphs that contain little more than conclusory statements or summaries of comments.

Let me be clear: I do not believe we should be regulating the Internet. But if we follow the FCC's logic, the agency would ultimately be regulating Google and any number of other Internet companies. Press accounts indicate that Google engages in subjective prioritization of some search results over others. This not only affects what traffic Internet users see; it can have a financial impact on Web sites. Should the FCC be determining whether Google is engaged in unreasonable discrimination? Is Google's traffic management reasonable? Would it be appropriate for the government to intervene because of the possibility of future harm, without any analysis of a current problem or market power? I think not – not for Google, or anyone else.

Ultimately, this is a question of authority. The FCC has changed its story about where it gets the power to issue these rules more times than it has uttered the word "transparency." Each time it teeters from one weak explanation to another based on the most recent legal or political impediment it is facing. None are consistent with its own precedent and all are an end-run around the D.C. Circuit's decision in the Comcast case that the FCC has failed to show it has authority in this space.

Regulating the Internet would be a radical departure from longstanding federal policy. It would change the approach that has allowed the Internet to work so well. If there is a problem to be corrected, it is Congress that should thoughtfully analyze the problem and determine the most appropriate solution.

For an expert agency to deserve that title, it must abide the line between reasoned decision-making and political coercion. Over the past half-decade or so, the FCC has lost sight of that line. With increasing frequency, the commission seems to be twisting the arms of those who come before it to submit to predetermined agendas rather than conducting market-based analyses. This not only harms the particular policy matter at issue, but jeopardizes the FCC's credibility. How can legislators, industry, and the public rely on the agency's "expertise" if the Commission does not look to be applying it?

For all these reasons, I urge my colleagues to vote for the resolution.