

Statement of the Honorable Greg Walden
Chairman, Subcommittee on Communications and Technology
Hearing on “Congressional Review Act”
March 9, 2011

Today we have a hearing and markup on network neutrality and H. J. Res. 37, the resolution of disapproval I introduced to stop the FCC from regulating the Internet.

This is our second hearing on the topic. On Feb. 16, 2011, this Committee had a three hour hearing with all five FCC Commissioners. At the request of our Democratic colleagues, I delayed a previously scheduled mark-up and scheduled this hearing to shed even more light on the impact of the FCC’s rules for regulating the Internet.

I have introduced the resolution under the Congressional Review Act, which provides Congress with an expedited process to nullify agency rules. The resolution only requires a simple majority in each chamber, and is filibuster proof in the Senate. Because the form of the resolution is provided for in statute, it is not subject to amendment. Senate Majority Leader Harry Reid, an original cosponsor of the CRA, has described the process as a “reasonable, sensible approach to regulatory reform.”

We have an open and thriving Internet thanks to our historical hands-off approach. The Internet works pretty well; it’s the government that doesn’t. However, on Dec. 21, 2010, the FCC adopted rules regulating the Internet without statutory authority to do so.

But before we get into the harm government regulation of the Internet will cause, it’s important to realize that the FCC’s underlying theory of authority would allow the commission to regulate any interstate communication service on barely more than a whim and without any additional input from Congress. I do not want to cede such authority to the FCC.

Section 230 of the Communications Act makes it U.S. policy “to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation.”

Under the FCC’s rationale, its authority is bounded only by its imagination. This new rule is little more than a weak attempt to do an end-run around the D.C. Circuit’s Comcast ruling that the FCC failed to show it had authority to regulate the Internet. And do my Democratic colleagues agree that the FCC has the authority to regulate the Internet in coffee shops, bookstores, airlines and other entities? The FCC believes it has that authority but declined to subject those entities to their new regulations. This is an agency exceeding its congressional authority and its action will hurt investment and cost jobs.

A small cable and Internet provider from my district recently wrote to me about her concerns, stating:

“Last spring the FCC Chairman primed the pump, threatening to apply portions of Title II of the 1934 Telecom Act to broadband. The cable industry has invested billions of dollars of private capital to build broadband infrastructure to over 90% of American homes.

“Commissioners are looking in the rearview mirror, attempting to regulate the Internet of yesterday absent any market failure. How will companies like Bend Broadband be able to compete if we bear the brunt of the regulations while the giants, like Google, Amazon and Netflix, go free? The Internet is evolving. All members of the ecosystem need to work together to innovate. The Chairman has picked winners and losers in this recent effort to impose ‘net neutrality’ regulations. These efforts will cost jobs, stall innovation and dampen investment.”

This is not a partisan issue. In 2006, 58 Democrats voted with us on the House floor to oppose a network neutrality amendment to video legislation. Some of those Democrats are still on the full committee. Some are still on this subcommittee. And that was not a vote against a Title II versus a Title I approach. That was a vote against imposing network neutrality rules.

There is no crisis warranting the FCC’s deviation from our historical hands-off approach. Rather than show an actual problem, the FCC relies on speculation of future harm. The FCC even admits in the order that it conducted no market power analysis.

Dr. David J. Farber, grandfather of the Internet and former FCC chief technologist, warned in a Dec. 21, 2010 op-ed that the FCC’s “order will sweep broadband ISPs, and potentially the entire Internet, into the Big Tent of Regulation. What does this mean? ... Customer needs take second place and a previously innovative and vibrant industry becomes a creature of government rule-making.”

This will also make it harder for upstarts to compete with web incumbents. New entrants will have fewer resources to advocate before the FCC and will also lack the needed flexibility to strike creative deals to compete with web incumbents.

As we will hear today, what is even “more universally damaging...is the rule’s potential to destroy the ability of infrastructure providers to raise capital. That would threaten the infrastructure on which both consumers and content providers rely.”

We will also hear that the FCC’s rule will transfer wealth from broadband providers to application providers, “...but that does not begin to grasp the problem for both parties. A transfer of wealth between two independent parties can be beneficial to one at the expense of the other. A transfer of wealth that will ultimately cripple the party on which the other relies for its very existence is profoundly harmful to both.”

These regulations will cost jobs. They will hinder the necessary investment in network upgrades on which consumers and content providers rely thus thwarting the competitive free market vibrancy and innovation of the Internet.

Let’s keep the Internet open and innovative. I urge my colleagues to vote for the resolution.