



Legislative Bulletin.....April 7, 2011

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H.J. Res. 37—Disapproving the rule submitted by the Federal Communications Commission with respect to regulating the Internet and broadband industry practices.

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Key Take Away Points

- ***Network Regulation:*** Simply, net regulation will increase prices, impede innovation, eliminate consumer choice, and reduce the overall quality of service of the [Internet](#). The Internet is prime example of what can be achieved when companies are free to compete without the intervention of the heavy-hand of government.
- ***A Regulation in Search of a Problem:*** There is *no sufficient evidence* that a problem exists that should be addressed by drastic regulatory actions. The FCC has presented no pattern of marketplace abuses to justify imposing the ruling. Similar to EPA on the issue of global warming, the FCC believes it must impose suffocating bureaucratic regulations on a nonexistent threat.

Democratic Inconsistency Alerts!

- ***So-called “Discrimination”:*** House Democrats consistently use the term “discrimination” to replace the industry definition of network management because it derives a negative connotation. Some conservatives may believe this term is a bit of hyperbole when characterizing how companies manage their lines in order to control the flow of internet traffic. By using Democrat’s logic, any motorist should be able to claim discrimination when hitting a red light or being assessed a toll on a private road.
- ***Protecting the Little Guy:*** Some Democrats insist these rules are needed to protect internet content produced by small firms from being subject to overbearing rules imposed by big telecommunications firms. In fact, many of the entities most actively pressing for net neutrality regulations are also Fortune 500 and Dow Jones Industrial Average companies that stand to make significant profits with the imposition of the rule.
- ***Internet Freedom:*** Ironically, some Democrats also refer to “net neutrality” as Internet Freedom when in actuality the FCC rules mark the first time the government has stepped

into the world of internet regulation. Additionally, most conservatives would argue that additional government rules and regulations rarely increase freedom of speech.

Order of Business: The joint resolution is scheduled to be considered on Thursday, April 7, 2011, under a closed rule (H.Res.200), considered today (April, 5, 2011), that provides for one hour of debate and a motion to recommit.

Summary: The Joint Resolution resolves that: “Congress disapproves the rule submitted by the Federal Communications Commission relating to the matter of preserving the open Internet and broadband industry practices (Report and Order FCC 10-201, adopted by the Commission on December 21, 2010), and such rule shall have no force or effect.”

Background on FCC: Beginning in 2009, the Federal Communication Commission (FCC) has voted on several measures to promulgate regulations to impose the so-called concept of “network neutrality” on private industry. In December of last year, the FCC finally imposed new regulations that would effectively prohibit internet service providers managing the distribution of internet content. However, the FCC would allow mobile phone companies to put some limits on traffic. The resolution of disapproval would block the FCC from moving forward with implementing regulation and prevent the agency from passing similar rules on internet service providers. The 1996 Telecommunications Act explicitly directs the government to “preserve the vibrant and competitive free market that exists for the Internet and other interactive computer services, unfettered by federal or state regulation.” The Congressional Research Service has provided a [comprehensive analysis](#) of the history of the network neutrality issue since it became an issue in Congress in 2005.

- ***What Is “Net Neutrality”:*** In response to the concerns raised by many content companies (e.g. Yahoo, Google, Microsoft, eBay) that Internet service providers (e.g. Verizon, AT&T, Comcast) may start charging fees to guarantee priority on their networks for certain kind of services, the concept of “network neutrality” was created. Theoretically, “net neutrality” would prevent Internet service providers from “discriminating” against individuals or content companies by charging extra fees for guaranteeing priority on their broadband networks. Internet service providers believe that requiring equal treatment of all Internet content will interfere with their ability to manage their network data traffic and capacity. Essentially, supporters of net neutrality fear cable and telephone companies will arbitrarily pick winners and losers and even shut down the entire Internet from certain services or information.

For more information on Democratic efforts to impose so-called Network Neutrality rules in the 111th Congress, [click here](#) to review a 2009 RSC Policy Brief.

- ***Conservative Counterpoints to Proponents of Net Neutrality:*** By imposing so called network neutrality requirements on service providers, the FCC will stifle innovation, reduce investment in new technologies, and undermine job creation at the very moment when continued Web and telecommunications growth is most critical. By dictating Internet traffic rules for service providers and operators, the Obama administration is prohibiting carriers from offering a multitude of services, preventing proper management of their networks to minimize slowdowns, and introducing other innovative methods to address the problem of bandwidth constraint. Providers must be assured they have the ability to constantly provide the management necessary to ensure consumers get the

experience they expect while Internet traffic continues to grow – as much as fivefold in the next three to four years according the FCC

Background a Resolution of Disproval: The Congressional Review Act of 1996 (CRA) established new, expedited procedures for Congress to exercise its oversight authority over agencies' rulemaking process. The law requires that all final rules issued by federal agencies be submitted to Congress, and Congress is provided a sixty-day period from the date of that submission to act on a resolution of disapproval. A resolution of disapproval is a joint resolution of Congress that, if enacted into law, will nullify the rule ("such rule shall have no force or effect") and prevent the agency from issuing a substantially similar rule without explicit statutory authorization.

The sixty-day period provided by the CRA is designed to provide Congress with sufficient time to consider any resolution of disapproval. The sixty-day period is exclusive of periods when Congress is in recess or adjourned, and if it extends beyond the point at which a Congress adjourns a session *sine die*, it begins anew on the 15th day of session after Congress reconvenes. If both houses approve the joint resolution, but it is vetoed, Congress is given an additional 30 days to override the veto. A rule is allowed to go into effect while a resolution of disapproval is pending, but if such a resolution is enacted, the rule is considered as never having been in force. The CRA also requires the implementation of any major rule a rule that has an annual cost of more than \$100 million, involves a major increase in costs or prices, or has a significant adverse effect on employment, investment, or innovation be delayed for sixty days.

While Congress and the President may at any time enact a joint resolution or bill to override an agency action, the CRA provides a resolution of disapproval with expedited consideration procedures in the Senate to simplify and hasten the review process. After the joint resolution has been introduced in the Senate and has been before a committee for twenty days, a petition from any thirty Senators may discharge the resolution from committee and place it on the floor for consideration. The motion to proceed by the thirty Senators is non-debatable and all other possible dilatory actions are prohibited; the debate on the floor is limited to 10 hours, and no amendment is in order. There is no special consideration procedure in the House, but, according to CRS, it would very likely be considered as prescribed by a special rule.

For further information, see this CRS Report on the [Congressional Review Act](#).

Committee Action: The bill was introduced on February 16, 2011, and referred to the Committee on Energy and Commerce. On March 15, 2011, the full committee held a mark-up and ordered the bill to be reported by a vote of [30-23](#).

Administration Position: A Statement of Administration Policy is not available at press time.

Cost to Taxpayers: According to CBO, "H.J. Res. 37 would invoke a legislative process established by the Congressional Review Act (Public Law 104-121) to disapprove the open Internet rule. If H.J. Res. 37 is enacted, the published rule would have no force or effect. Based on information from the FCC, CBO estimates that voiding this rule would have no effect on the budget."

Does the Bill Expand the Size and Scope of the Federal Government? No, it arguably reduces the scope of government by limiting the ability of the FCC to regulate the flow of internet traffic on private industry.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates? No.

Does the Bill Contain Any Federal Encroachment into State or Local Authority in Potential Violation of the 10th Amendment? No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits? Committee Report [112-51](#) states in compliance with clause 9(e), 9(f), and 9(g) of rule XXI, H.J.Res.37 contains no earmarks, limited tax benefits, or limited tariff benefits.

Constitutional Authority: The Congressional Record entry states “Article I, Section 8 of the U.S. Constitution (“The Congress shall have PowerTo regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes).”

Outside Organizations in Support: Americans for Prosperity (AFP) – Key Vote, Heritage Action, Competitive Enterprise Institute, Freedom Works, (not exhaustive list)

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