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1 {York Stenographic Services, Inc.}

2 HIF068.162

3 MARKUP OF ``H.J. RES 37, JOINT RESOLUTION DISAPPROVING THE

4 RULE SUBMITTED BY THE FEDERAL COMMUNICATIONS COMMISSION''

5 WEDNESDAY, MARCH 9, 2011

6 House of Representatives,

7 Subcommittee on Communications and Technology

8 Committee on Energy and Commerce

9 Washington, D.C.

10 The subcommittee met, pursuant to other business, at
11 3:32 p.m., in Room 2123 of the Rayburn House Office Building,
12 Hon. Greg Walden [Chairman of the Subcommittee] presiding.

13 Members present: Representatives Walden, Terry,
14 Stearns, Shimkus, Bono Mack, Rogers, Bilbray, Bass,
15 Blackburn, Gingrey, Scalise, Latta, Guthrie, Kinzinger,
16 Barton, Upton (ex officio), Eshoo, Markey, Doyle, Matsui,
17 Barrow, Towns, Pallong, Rush, DeGette, Dingell and Waxman (ex
18 officio).

19 Staff present: Jim Barnette, General Counsel; Ray Baum,
20 Senior Policy Advisor/Director of Coalitions; Mike
21 Bloomquist, Deputy General Counsel; Allison Busbee,
22 Legislative Clerk; Paul Cancienne, Policy Coordinator, CMT;
23 Neil Fried, Chief Counsel, C&T; David Redl, Counsel, Telecom;
24 Alex Yergin, Legislative Clerk; Kristin Amerling, Democratic
25 Chief Counsel and Oversight Staff Director; Phil Barnett,
26 Democratic Staff Director; Jen Berenholz, Democratic Chief
27 Clerk; Shawn Chang, Democratic Counsel; Jeff Cohen, FCC
28 Detailee; Sarah Fisher, Democratic Policy Analyst; Karen
29 Lightfoot, Democratic Communications Director and Senior
30 Policy Advisor; and Roger Sherman, Democratic Chief Counsel,
31 Communications and Technology.

|
32 Mr. {Walden.} The committee will come to order. The
33 chair recognizes himself for an opening statement.

34 As I stated in my letter to the ranking member yesterday
35 and in my opening statement today, H.J. Res 37 is a
36 resolution introduced under the powers vested in all members
37 pursuant to the Congressional Review Act. Congress enacted
38 the CRA in 1996 on a bipartisan basis as part of the Small
39 Business Regulatory Enforcement Fairness Act.

40 The ranking member's letter of March 7, 2011, confirms
41 the opinions of the House parliamentarian and the committee's
42 general counsel by correctly noting that no amendments to a
43 CRA resolution are in order in the House. The bipartisan co-
44 sponsors of the resolution and I chose to follow the
45 procedure set forth in the CRA to ensure that the matter was
46 brought to a prompt and guaranteed vote in the United States
47 Senate.

48 I am far from reticent about marking a regular H.R. bill
49 but doing so would obviously eliminate our ability to use the
50 CRA process to more immediately repeal the FCC's attempt to
51 regulate the Internet before it does lasting damage to the
52 Internet itself. However, in ``remaining consistent with the
53 traditions of open debate'' that are a hallmark of our
54 committee as the ranking member has recommended we will

55 follow regular order during the subcommittee's markup of H.R.
56 Res 37.

57 A vote against the resolution is nothing more than a
58 vote to allow the FCC to reclassify broadband under Title II,
59 once the agency loses the appeal of this order in court.
60 More than 300 members from both sides of the aisle have
61 opposed such reclassification. Moreover, 58 Democrats voted
62 with us in 2006 to oppose network neutrality. Some of those
63 Democrats are still on the committee. Some are still on this
64 subcommittee and that was not even a vote against the Title
65 II versus Title I approach. That was a vote against imposing
66 network neutrality rules all together.

67 Some claim the resolution causes uncertainty. We have
68 heard that today. It does just the opposite. Large and
69 small businesses alike have thrived on an Internet free of
70 government regulation. That is the status quo. It is the
71 FCC's order that threatens to break the Internet as we know
72 it, not the resolution. The resolution is simply a narrowly
73 tailored vehicle to eliminate rules regulating the Internet
74 that the FCC did not have authority to impose. Of far
75 greater concern, should be the order. To say the order
76 creates certainty is absurd. The only uncertainty the order
77 even partially resolves is the uncertainty the FCC itself
78 created by threatening reclassification and the agency has

79 not even closed the Title II proceeding, it has left it open.

80 Supporting the resolution of disapproval will also avoid
81 the collateral damage the FCC's authority that would come
82 when the agency loses the appeal in court. Remember, the
83 rule is being challenged by Verizon and Metro PCS in court.
84 Some carriers have decided that bad was better than worse and
85 they were large enough to absorb the hit from the rules.
86 That is a far cry from the story the FCC is telling that
87 industry supports the order and it is good for economy. And
88 what of the smaller providers like Mr. DeReggi who testified
89 today? He does not have the resources either to absorb the
90 hit or send a team of lawyers to camp out daily at the FCC.
91 And as Mrs. Kovacs pointed out, the rules create a regulatory
92 weapon to shift costs from web companies to broadband
93 providers, harming both the core and the edge of the Internet
94 in the process. For those reasons, I urge my colleagues to
95 support the resolution.

96 [The prepared statement of Mr. Walden follows:]

97 ***** COMMITTEE INSERT *****

|
98 Mr. {Walden.} I now recognize my friend from
99 California, the ranking member of the subcommittee, Mrs.
100 Eshoo, for her opening statement.

101 Ms. {Eshoo.} Thank you, Mr. Chairman.

102 What is obvious on my part is that I don't agree with
103 this, to put it mildly and very respectfully, I really
104 believe that it is a waste of time. We have heard from
105 witnesses at both today's hearing and at other times on this
106 whole issue of companies flourishing in open and accessible
107 Internet. We have heard economists. We have had consumer
108 organizations. Your witness in the consumer front today, you
109 heard what that person said.

110 There are over a million people that weighed in at FCC
111 saying we want the Internet kept open and accessible. There
112 are hundreds of organizations that have weighed in and it
113 seems to me that there is a legislative tin ear here and that
114 is why I really don't think is necessary but the majority
115 believes that. Even AT&T was here today and said that they
116 thought that this was a light touch in terms of a regulatory
117 framework at the FCC. So small, medium and large, broadband
118 providers, small innovative businesses, consumer
119 organizations, you name it, they support what I just
120 described so that is why I think this is a waste of time.

121 But I also think it is going to do damage. We didn't
122 raise the issue of uncertainty ourselves. It is what
123 business people have told us. All markets want certainty and
124 to upset that apple cart, I think is fooling around with
125 something that we shouldn't be fooling with and uncertainty
126 in the broadband ecosystem as well as in any other kind of
127 system is the last thing a fragile economy needs now. There
128 are a lot of people that give lip service to jobs. There is
129 no sector of our national economy that has produced more jobs
130 than what is related to the Internet so today you are
131 tinkering with something that I think is legislatively
132 uncalled for on the one hand but also I think is dangerous
133 and it is not necessary.

134 There are hundreds of billions of dollars that have been
135 created in our economy. I think simple rules of the road for
136 the American people. If you really and truly understand what
137 an open and free Internet is, you would stand on the side of
138 consumers that want to keep it that way. Let consumers be in
139 the driver's seat. That is my position and I believe the
140 position of an overwhelming number of people in the country.

141 So I think it is regrettable that the CRA is being taken
142 up. I think that there is no heed being paid to the
143 organizations, the businesses, the consumer organizations,
144 the high-technology associations and the companies that

145 comprise those associations. You are just throwing that
146 overboard. So I think CRA is going to stand for can't
147 resolve anything rather than Congressional Review Act and I
148 think that it is unnecessary and again, I said earlier today
149 that there is like this virus that has infected the majority
150 in the Congress. God forbid that any agency move forward
151 either to carry out the laws that the Congress has charged
152 them with or that we interact with them and set up rules that
153 are going to protect the consumers and businesses in our
154 country. So I am against this. I don't think it is
155 necessary at all, in fact I think it is damaging. Thank you.

156 [The prepared statement of Ms. Eshoo follows:]

157 ***** COMMITTEE INSERT *****

|
158 Mr. {Walden.} The gentlelady's time has expired.

159 The chair reminds members that pursuant to committee
160 rules, all members opening statements will be made part of
161 the record. Are there further opening statements?

162 Mr. Terry.

163 Mr. {Terry.} Thank you, Mr. Chairman.

164 We on this side want a fair and open, untouched
165 Internet, untouched by government hands. Certainly we want
166 the consumers to be empowered which when government starts
167 regulating, consumers lose that power. We believe that an
168 agency's power to regulate should be specifically allowed by
169 Congress and whatever power is authorized by Congress to an
170 agency should be limited. Neither is true with the FCC and
171 this net neutrality rule. It was neither authorized or
172 Congress did not specifically allow the FCC to start
173 regulating the Internet, nor do they have any limitations on
174 its powers. And as we found out from this hearing and one
175 with the FCC, there are many businesses that rely on the
176 Internet that are now hoping that the FCC rules in their
177 favor. For example, one business wants to make sure that
178 there are no tiered service by providers. Tiered meaning the
179 more power you use or the more speed, the more megabits you
180 get that you will pay more. They want a flat, simple system

181 because that advantage is there's so instead of consumers
182 making that choice, you have the FCC. That is why we are
183 doing this. It isn't the flu. We are doing what the
184 Constitution states we should be doing.

185 [The prepared statement of Mr. Terry follows:]

186 ***** COMMITTEE INSERT *****

|
187 Mr. {Walden.} The gentleman's time has expired.

188 The chair recognizes the ranking member of the full
189 committee, Mr. Waxman.

190 Mr. {Waxman.} Thank you, Mr. Chairman.

191 Today we are considering a terrible bill under an even
192 worse process. The legislation we are considering would
193 allow phone and cable companies to control what websites
194 Americans can visit and what applications they can run. This
195 is a fundamentally bad idea. It is opposed by high-tech
196 industry, consumer groups, religious groups and labor unions.
197 Even the big phone and cable companies that might stand to
198 benefit the most from this legislation are not asking
199 Congress to act.

200 American businesses want to see an end to the debate on
201 how to preserve a free and open Internet. They are looking
202 for certainty and clear rules that will allow them to focus
203 on their business plans rather than their Washington offices.

204 At the hearing we just concluded, we heard from an
205 economist, a technology entrepreneur, a major broadband
206 provider that the FCC's rules are reasonable and balanced.
207 Although some wish the FCC had gone further, the FCC acted to
208 provide basic rules that companies can follow, investors can
209 rely on and consumers can turn to for protection.

210 Republicans couldn't get a single major broadband provider to
211 testify today in opposition to the rules or in support of
212 their legislation. Yet our Republican colleagues insist that
213 we move forward with a resolution to invalidate the FCC's
214 rules. That will create more uncertainty in the broadband
215 marketplace and it will stifle innovation and growth.

216 As bad as the substance is, the process is even worse.
217 The Republican majority is using the Congressional Review Act
218 to strike down the FCC's rules. This is an extraordinary
219 process and gives the majority the ability to deny us a vote
220 on amendments. That is fundamentally unfair. It means we
221 will have no opportunity to propose changes that might
222 improve this legislation. Instead of an open and
223 deliberative process, this bill is being rammed through under
224 procedures that take away the minorities most basic rights.

225 If this legislation passes, consumers will not have a
226 right to know whether their Internet connections are as fast
227 as advertised. They will not have a right to know how their
228 provider is managing their data or charging them for certain
229 services, yet we cannot even offer an amendment to restore
230 these basic consumer protections.

231 This resolution also leaves deficiencies in other
232 important areas including public safety, cyber security,
233 copyright protection and protecting children online but under

234 this process, members may have no opportunities to fix them.
235 The majority does not need to use the CRA to block the
236 implementation of the FCC's rules. If they feel that the
237 authority over broadband should be more specifically
238 delineated by Congress, they can bring before the committee a
239 piece of legislation designed to just that. They face no
240 pressing time constraint that justified denying the minority
241 the right to amend the bill. The FCC's order has yet to be
242 published in the Federal Register and will not take effect
243 for months. If the Senate considers this measure, it will
244 not do so until Federal Register publication occurs so it is
245 unclear why we are rushing to use this extraordinary process
246 over the unanimous objection of Democratic Members.

247 I yield back my time.

248 [The prepared statement of Mr. Waxman follows:]

249 ***** COMMITTEE INSERT *****

|
250 Mr. {Walden.} The gentleman's time has expired.

251 I recognize the gentleman from Texas, Mr. Barton.

252 Mr. {Barton.} Is it in order to give an opening
253 statement or to strike a word?

254 Mr. {Walden.} It is in order to give an opening
255 statement for 1 minute.

256 Mr. {Barton.} One minute.

257 Mr. {Walden.} The chair, the ranking member of the
258 subcommittee, the full committee and rankers each get 4 and
259 then everybody else gets 1.

260 Mr. {Barton.} Okay, then I would seek recognition for 1
261 minute.

262 Mr. {Walden.} You are so recognized.

263 Mr. {Barton.} Thank you.

264 I could not more fundamentally disagree with my good
265 friend from California and what he just said. If he is
266 right, then the only way to protect people is for the
267 government to do it. On the other hand, if Chairman Walden
268 and all the cosponsors of this legislation are right, open
269 transparent markets in a deregulated environment where
270 consumers can choose and providers can choose is the much
271 more cost-effective way to go. That is the way we have been
272 so-called regulating the Internet for the last 15 years, 16

273 years. I think it has worked extremely well. This bill
274 which I am proud to be a cosponsor of, all it does is one,
275 reestablish congressional authority over the FCC and two,
276 make it explicitly clear that we believe in markets, we
277 believe in openness, and we believe in transparency, and we
278 trust consumers and providers in a fair and open marketplace
279 to determine the balance of how the Internet shall be used.

280 With that, I yield back.

281 [The prepared statement of Mr. Barton follows:]

282 ***** COMMITTEE INSERT *****

|
283 Mr. {Walden.} The gentleman yields back his time.

284 I recognize the gentleman from Massachusetts, Mr.

285 Markey, for 1 minute.

286 Mr. {Markey.} Thank you, Mr. Chairman, very much.

287 There is no reason to rush here. The Senate is not
288 going to take this up until the summer. We are going to
289 change something which the CTIA can live with, the NCTA can
290 live with, the major carriers can live with, the competitors
291 can live with and as yet, there has been no problem that has
292 been identified in the marketplace. If we are going to act,
293 it seems to me it should be after something is identified.
294 We have been assured by the witnesses today that thus far
295 none have been identified and so if we act this way then we
296 might as well just turn ourselves into a regulatory agency.
297 I think if you can identify a serious problem as it is
298 actually emerging then we should move forward but right now
299 consumers need it, big companies support it, entrepreneurs in
300 our economy rely upon it.

301 But the majority is trying to repeal it. It makes no
302 sense and now we are going to send it over the Senate where
303 it will just linger for 3, 4 or 5 months before they even
304 take it up. That is disrespectful to this committee's
305 tradition in telecommunications where we finish a process in

306 its totality and then send it over to the Senate for their
307 consideration.

308 [The prepared statement of Mr. Markey follows:]

309 ***** COMMITTEE INSERT *****

|
310 Mr. {Walden.} The gentleman's time has expired, sounds
311 a lot like the FCC's decision not to do market power analysis
312 before they act.

313 The chairman recognizes the gentleman from Ohio, Mr.
314 Latta.

315 Mr. {Latta.} Thank you, Mr. Chairman.

316 I am a cosponsor of and fully support the resolution
317 before the committee because it is Congress' prerogative to
318 stop agency rules that will harm our Nation's economy.
319 Furthermore, in the case of the net neutrality ruling, I do
320 not believe that the FCC had either the authority or the
321 rationale to issue these controversial rules just a few days
322 before Christmas of last year.

323 Regulation stifles small business whether they are from
324 the EPA, Obamacare or the FCC. I hear these stories everyday
325 from the businesses across my district in northern Ohio. The
326 Internet is the culmination of years of private enterprise
327 that has thrived without regulation. It experienced
328 explosive growth in the last 20 years and it continues to do
329 so.

330 The FCC's net neutrality decision brings additional
331 government not just into people's lives but also into our
332 free market economy attempting to provide a solution to a

333 problem that doesn't exist. The additional government
334 regulation will only result in stifling economic growth that
335 our Nation so desperately needs.

336 And with that, Mr. Chairman, I yield back.

337 [The prepared statement of Mr. Latta follows:]

338 ***** COMMITTEE INSERT *****

|
339 Mr. {Walden.} The gentleman yields back the balance of
340 his time.

341 Who else seeks recognition? The gentlewoman from
342 California, Ms. Matsui.

343 Ms. {Matsui.} Thank you, Mr. Chairman.

344 Mr. Chairman, I am strongly opposed to this resolution.
345 Without proper vetting of this resolution I fear this
346 resolution is loaded with unintended consequences that are
347 frankly are not good for broadband providers, small business
348 owners and entrepreneurs, innovators, and most importantly,
349 job creation.

350 That being said, I strongly support the FCC's open
351 Internet order because it lays the foundation to create
352 market certainty that protects consumers, spurs innovation
353 and investment and creates jobs in our economy. I believe
354 this attempt to repeal the open Internet order is
355 irresponsible and will sent mixed signals to investors that
356 will stifle innovation and discourage job growth in broadband
357 technology sectors of our economy.

358 Mr. Chairman, I strongly urge a no vote on this
359 resolution. I yield back the balance of my time.

360 [The prepared statement of Ms. Matsui follows:]

361 ***** COMMITTEE INSERT *****

|
362 Mr. {Walden.} I thank the gentlelady.

363 Any other people seeking recognition on the Republican
364 side? If not, we will go down here and I believe Mr. Rush
365 was here before Mr. Pallone so Mr. Rush for 1 minute.

366 Mr. {Rush.} Thank you, Mr. Chairman.

367 Here we go again. We are consuming valuable time that
368 could and should be spend considering discussing and debating
369 what the witnesses told us earlier today before we recessed.
370 With no disrespect meant to the aforementioned witnesses, we
371 should be dealing with more pressing matters. For one, I am
372 surprised with the tenth anniversary of 9/11, and the sixth
373 anniversary of Hurricanes Katrina and Rita, a mere 6 months
374 or so away, that we have not gotten to the challenging issues
375 of clearing or filing spectrum for a public safety and first
376 respondents and how to go about funding the build-out of an
377 inoperable public safety network to protect our homeland.

378 What we are doing, Mr. Chairman, sets a very dangerous
379 precedent. This subcommittee is taking an extremely rare
380 action today by proposing to nullify the FCC's open Internet
381 rules by using a Congressional Review Act vehicle which has
382 been used far more by the Senate than in this chamber.
383 Coupled with that, the majority has had the audacity to say
384 that members would not be recognized for the purposes of

385 offering an amendment. Mr. Chairman, I intend to vote
386 against this measure and I encourage all of my colleagues to
387 do the same.

388 [The prepared statement of Mr. Rush follows:]

389 ***** COMMITTEE INSERT *****

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390 Mr. {Walden.} I thank the gentleman for his comments.
391 I would say that it is the statute and the way it is
392 constructed that precludes amendments to it.

393 Mr. Pallone, I apologize. I am reminded in a markup we
394 go by seniority so I recognize the gentleman from New Jersey.

395 Mr. {Pallone.} I have no problem. I came later so
396 thank you, Mr. Chairman.

397 I don't want to take up too much time but I did want to
398 put on record my opposition to today's proceedings. I know
399 that my Republican colleagues will say that H.J. Res 37 is a
400 necessity that must be put onto a fast-track procedure but I
401 believe you are accomplishing nothing more here today than
402 stifling the subcommittee's ability to debate and vote on
403 amendments, both important prerogatives.

404 Now, I also don't understand why my Republican
405 colleagues want to continue debate on this issue. I took a
406 hiatus from this subcommittee last Congress but now that I am
407 back, I hear a lot more from advocates, organizations and
408 companies that are affected by the jurisdiction of this
409 subcommittee and I want to make one thing clear. Not one
410 meeting that I have had in my district has been about net
411 neutrality. Not one advocate, organization or company has
412 urged me to pursue overturning the FCC order but those same

413 stakeholders have a lot of concerns. They are concerned
414 about broadband access. They are concerned about spectrum
415 reform and wireless capacity. They are concerned about the
416 Universal Service Fund Reform. So here we are. It is at 10
417 weeks and zero jobs bills later and today I just can't
418 understand why this subcommittee isn't meeting on these
419 important issues which need to be addressed to promote
420 innovation and create jobs. Thank you, Mr. Chairman.

421 [The prepared statement of Mr. Pallone follows:]

422 ***** COMMITTEE INSERT *****

|
423 Mr. {Walden.} The gentleman's time has expired. I
424 would remind the gentleman we had planned to do this markup
425 last week and at the encouragement of the majority we held a
426 hearing today and postponed the markup.

427 I would now recognize anyone else seeking.

428 Mr. {Waxman.} Mr. Chairman, point of order. I don't
429 think you need to make a running commentary. We could have
430 started this markup much earlier but we had the hearing.

431 Mr. {Walden.} Right.

432 Mr. {Waxman.} And all the members wanted to ask
433 questions. It looks like your members don't want to make
434 opening statements. Some of ours do. Let us proceed on
435 regular order.

436 Mr. {Walden.} Is anyone else seeking recognition?

437 Seeing no one, the chair is now prepared to call up the
438 resolution. Before I do so, I want to make clear how the
439 subcommittee will operate in considering the legislation.

440 The Congressional Review Act is obviously an
441 extraordinary procedural device. Although the consideration
442 of a joint resolution of disapproval in the House is done
443 largely under regular order, the CRA provides for certain
444 expedited procedures in the Senate. These procedures
445 immunize the resolution from the filibuster and subject it to

446 a simple majority vote after limited debate.

447 For our purposes today, the statute specifies the
448 precise language that must be used in a joint resolution of
449 disapproval. As a result, no or virtually no amendments to
450 the resolution are in order. Any amendments would be at odds
451 with the fundamental purpose of the resolution which is to
452 simply disapprove an agency action through the statutorily
453 prescribed language that will soon be before us. Such
454 amendments will therefore be non-germane.

455 We have thoroughly vetted this issue with the House
456 parliamentarian. In order to ensure that members would have
457 ample time to debate the joint resolution before us, I have
458 offered to the minority a time agreement under which both the
459 minority and majority would control debate time of the merits
460 of the resolution. Unfortunately, the offer has been
461 rejected so for the budding parliamentarians out there, stay
462 tuned for a lesson.

|
463 H.J. Res 37
464 Mr. {Walden.} The chairman now calls up H.J. Res 37 and
465 asks the clerk to report.

466 The {Clerk.} H.J. Res 37, Joint Resolution disapproving
467 the rule submitted by the Federal Communications Commission
468 with respect to regulating the Internet and broadband
469 industry practices. Resolved by the Senate and House of
470 Representatives of the United States of America and Congress
471 assembled that Congress disapproves the rule submitted by the
472 Federal Communications Commission relating to the matter of
473 preserving the open Internet and broadband industry
474 practices, report and order FCC 10-201, adopted by the
475 Commission on December 21, 2010, and such rule shall have no
476 force or effect.

477 [H.J. Res 37 follows:]

478 ***** INSERT 1 *****

|
479 Mr. {Walden.} Is there any discussion on the
480 resolution?

481 Mr. {Dingell.} Mr. Chairman?

482 Mr. {Walden.} The gentleman from Michigan, for what
483 purpose does the gentleman from Michigan seek recognition?

484 Mr. {Dingell.} To strike the requisite number of words.

485 Mr. {Walden.} The gentleman is recognized.

486 Mr. {Dingell.} Mr. Chairman, this is an exercise in the
487 most exquisite frustration. The proposal is not going to be
488 considered in the Senate. It may or may not pass the House.
489 It probably won't accomplish what we want to do. On top of
490 that it is almost sure that the Senate will be moving forward
491 on other components of public policy in the area of
492 broadcasting and in the area of spectrum use. So they are
493 moving, as I understand it, on matters both involving
494 spectrum and other things at this particular time. So we are
495 ceding then much of our legislative responsibilities to the
496 Senate. We are engaging in disapproving of something that
497 the Federal Communications Commission is doing which is
498 probably not good sense and I don't have the supporters and I
499 think you don't have your supporters but I would just observe
500 that the proper place for this matter then to be reviewed is
501 in the courts and the action of the FCC is going to be tied

502 in the courts for a goodly while and never ever reach any
503 semblance of reality. So I think that this is a bad way to
504 proceed but unfortunately, Mr. Chairman, and I say this
505 respectfully, it appears that this is also a bad way to
506 proceed because members are not being permitted to offer
507 amendments and to have these things discussed in a proper,
508 full and thoughtful way inside this body. And I say this
509 again with great respect for you but this is rather
510 inconsistent with the way that this committee has its history
511 in running. We have always tried to allow the members to
512 have the fullest opportunity to say what they had to say and
513 a full opportunity for everybody far-right and far-left and
514 in-between to say what it was they wanted to say in the
515 belief that this resulted in better legislation. So the end
516 result here is that we are having a fine exercise in
517 frustration. We are having a piece of legislation come out
518 that is not going to go anywhere or do anything. The Senate
519 is going to seize opportunity and do things that look like a
520 legislative body which is a great curiosity and the end
521 result of the whole business is that this is probably a great
522 dissipation of time that might be otherwise be better used
523 for something else.

524 Having said that, I do think that we ought to be able to
525 offer amendments to this. I don't happen to have any. I

526 happen to strongly oppose what the FCC is doing. I happen to
527 think that the courts are going to hit them on the head and
528 say fellows, you were dead wrong and the end result is going
529 to be that we are having a fine time being together at four
530 o'clock on this afternoon but we are not going to accomplish
531 a whole lot and I do thank you for your kindness in
532 recognizing me.

533 Mr. {Walden.} The gentleman yields back his time.

534 For what purpose does the gentlelady from California
535 seek recognition?

536 Ms. {Eshoo.} Mr. Chairman, I have an amendment at the
537 desk.

538 Mr. {Walden.} The clerk will report the amendment.

539 Mr. {Terry.} Mr. Chairman, I reserve a point of order.

540 Mr. {Walden.} The gentleman from Nebraska reserves a
541 point of order.

542 The {Clerk.} Amendment to H.R. Res 37 offered by Ms.
543 Eshoo.

544 [The amendment follows:]

545 ***** INSERT 2 *****

|
546 Ms. {Eshoo.} Mr. Chairman, this is oh, he has to read
547 it. I ask for unanimous consent and consider the amendment
548 read.

549 Mr. {Walden.} Without objection.

550 Ms. {Eshoo.} The gentlelady recognized. The gentleman
551 from Nebraska continues to recognize. The gentlelady is
552 recognized to speak on her amendment.

553 Ms. {Eshoo.} Thank you, Mr. Chairman.

554 This is really a very simple amendment. If the FCC is
555 in consultation with the Secretary of Homeland Security and
556 determines that this rule will undermine the needs of law
557 enforcement, homeland security, public safety or national
558 security personnel, the resolution should not be acted on.
559 So I am offering this amendment because I am concerned about
560 the unintended consequences that the resolution would create.
561 The FCC's open Internet rules are intended to ensure that
562 broadband providers can meet the need of public safety. We
563 haven't spent very much time talking about public safety
564 during today's considerations and not a great deal when the
565 FCC was here before us. So under what I believe are the
566 ambiguities created by the CFA, it is unclear whether the FCC
567 can adopt new rules that would provide this protection.

568 So I would like to just ask the counsel a few questions.

569 The CRA states that any disapproved rule, ``may not be
570 reissued in substantially the same form and a new rule that
571 is substantially the same is such a rule may not be issued
572 unless new laws are enacted by Congress.'' So again I am
573 troubled by the uncertainties that would be created by this
574 language. Can you explain to me what the term substantially
575 the same means and does it mean that the FCC cannot adopt
576 open Internet rules requiring disclosure, no blocking, no
577 unreasonable discrimination but that it can adopt other types
578 of rules?

579 Mr. {Fried.} So, Ms. Eshoo, these rules would be
580 nullified. If the FCC so chose it could try and adopt
581 different regulations. If someone thought that those
582 regulations were substantially similar, they could file an
583 appeal in court and argue that the new rules were still
584 disapproved under the resolution because they were
585 substantially similar to the rules that would have been
586 disapproved.

587 Ms. {Eshoo.} If the resolution is enacted, do you
588 believe that the FCC retains the jurisdiction and the
589 authority over broadband Internet access providers to resolve
590 complaints alleging discriminatory network practices?

591 Mr. {Fried.} The FCC believes it does. That is a
592 matter before the court in the Verizon.

593 Ms. {Eshoo.} But if the resolution is enacted, do you
594 believe that you here as our lawyer. I am not asking you
595 what the FCC people think. I am asking you what would happen
596 relative to the enactment of this resolution.

597 Mr. {Fried.} So if you are asking my opinion, I do not
598 believe the FCC has the authority to regulate the Internet.

599 Ms. {Eshoo.} None whatsoever?

600 Mr. {Fried.} That is correct. These rules are not
601 authorized. In my opinion, these rules are not authorized.

602 Ms. {Eshoo.} But the FCC implement recommendations
603 contained in the National Broadband Plan regarding cyber
604 security?

605 Mr. {Fried.} The FCC believes they can, yes.

606 Ms. {Eshoo.} I am asking our attorney here.

607 Mr. {Fried.} I am sorry so what are the rules?

608 Ms. {Eshoo.} I am asking you.

609 Mr. {Fried.} Yes, so what rules?

610 Ms. {Eshoo.} Would the FCC, in your view, implement
611 recommendations contained in the National Broadband Plan
612 regarding cyber security?

613 Mr. {Fried.} Yes.

614 Ms. {Eshoo.} At the request of a broadband provider,
615 could the Commission issue a declaratory ruling that would
616 give that provider the flexibility needed to prioritize

617 certain public safety-related traffic?

618 Mr. {Fried.} I am sorry. Could the FCC allow
619 prioritization?

620 Ms. {Eshoo.} Yes.

621 Mr. {Fried.} Prioritization can occur under current
622 law.

623 Ms. {Eshoo.} So anything relative to public safety is
624 not knocked out by the CRA?

625 Mr. {Fried.} That is correct. Carriers are allowed to
626 prioritize traffic under current law in the absence.

627 Ms. {Eshoo.} Does the FCC have, in your view, under
628 this resolution that is being considered, have the
629 jurisdiction to carry out the public safety issues that are
630 facing the Nation?

631 Mr. {Fried.} Yes, their ability to carry out public
632 safety issues are not related to the network neutrality
633 order.

634 Ms. {Eshoo.} In no way, shape or form?

635 Mr. {Fried.} That is correct.

636 Ms. {Eshoo.} Thank you.

637 Mr. {Waxman.} Will the gentlelady yield?

638 Ms. {Eshoo.} I would be glad to.

639 Mr. {Waxman.} The fact that the FCC could not revisit
640 the issue of the freedom for the Internet rules is I think a

641 major reason why a lot of the stakeholders have said to us
642 just leave it alone. There are more important things for
643 this committee to do. We have got public safety. You can
644 leave it to the FCC but perhaps Congress should play a role
645 in it and I think we ultimately will have to. We should be
646 doing something in other areas as well and working together
647 on a bipartisan basis.

648 Mr. {Walden.} The gentlelady's time has expired.

649 Mr. {Waxman.} I ask unanimous consent for another 30
650 seconds.

651 Mr. {Walden.} For another 30 seconds without objection.

652 Mr. {Waxman.} If this is rule carried, then the FCC's
653 rules are negated but the FCC's ability to deal with this
654 issue is also cancelled and so I think that it leaves things
655 in an uncertain position which is why I think we ought to
656 reject this rule and allow the rules to stay in effect or
657 legislate to change them, not this way.

658 Mr. {Walden.} Does the gentleman from Nebraska insist
659 on his point of order?

660 Mr. {Terry.} Yes, I insist.

661 Mr. {Walden.} The gentleman insists on his point of
662 order. The chair is prepared to rule that the amendment is
663 not in order.

664 Mr. {Waxman.} Mr. Chairman, I would like to speak on

665 the point of order.

666 Mr. {Walden.} The gentleman is recognized briefly to
667 speak on the point of order.

668 Mr. {Waxman.} Mr. Chairman, I know that if you use this
669 procedure of the Congressional Review Act you will rule that
670 it is not germane but I just want to reemphasize and
671 underscore that traditionally this committee used germane as
672 objections because the amendment wasn't relative to the
673 subject matter or the amendment was outside the scope of the
674 committee's jurisdiction. Neither of those circumstances
675 apply to this amendment and or the other amendments that we
676 will be proposing to offer today. It is indisputably within
677 the committee's jurisdiction to review and develop
678 communications policy and the amendments we are proposing
679 today focus squarely on the subject of the FCC open Internet
680 rule. The only basis for a point of order is that an
681 amendment does not conform to the Congressional Review Act.
682 Now, that Act may give you a chance at the Senate to stop
683 them from offering amendments as well. It is an expedited
684 procedure that they can use to stifle debate as we are now
685 having stifling debate on proposals and I would hope that if
686 members don't raise points of order we could go ahead and
687 consider and debate and vote on the substance of the
688 amendments. It is time we look at other issues and have them

689 fully before us and so I make that point to you for your
690 consideration, Mr. Chairman.

691 Mr. {Walden.} I appreciate the gentleman's discussion.
692 I now recognize the gentleman from Nebraska on his point of
693 order.

694 Mr. {Terry.} I insist on the point of order. The
695 amendment is not germane to the joint resolution. The joint
696 resolution contains statutorily prescribed language under the
697 Congressional Review Act. The amendment seeks to change that
698 language in a manner that would alter it from it's privileged
699 form and would violate the fundamental purpose of the joint
700 resolution. It is therefore non-germane.

701 Mr. {Walden.} The chairman is prepared to rule that the
702 amendment is not germane to the joint resolution. The chair
703 finds the amendment seeks to amend the joint resolution
704 before us in a way that will fundamentally alter the
705 prescribed form of such joint resolutions under the
706 Congressional Review Act. The gentleman is therefore
707 correct, the amendment is not germane. The amendment is not
708 in order. Once again, both sides have agreed that under this
709 Act, amendments are not germane and not in order. I have
710 agreed with the former chairman to allow discussion on the
711 amendments up to a certain point.

712 For what purpose does the gentleman from Massachusetts

713 seek recognition?

714 Mr. {Markey.} I have an amendment at the desk.

715 Mr. {Walden.} The clerk will report the amendment.

716 The {Clerk.} Amendment to H.J. Res 37 offered by Mr.

717 Markey.

718 [The amendment follows:]

719 ***** INSERT 3 *****

|
720 Mr. {Terry.} I reserve a point of order, Mr. Chairman.

721 Mr. {Walden.} The gentleman from Nebraska reserves a
722 point of order.

723 The gentleman from Massachusetts is recognized on his
724 amendment.

725 Mr. {Markey.} Thank you, Mr. Chairman, very much.

726 This is of course a momentous occasion for this
727 committee. This motion of disapproval has been used only
728 once in 15 years so we all know that we are dealing with a
729 very solemn subject here in this room and we all know as well
730 that it is important for us as the committee of jurisdiction
731 not to invoke the law of unintended consequences in an area
732 so sensitive to the American economy. This is really an
733 historic moment for this committee so what my amendment would
734 do is to specify that if Congress disapproves the open
735 Internet rules adopted by the FCC last December that nothing
736 in the joint resolution will undermine the authority of the
737 Commission to protect Internet users including authority with
738 respect to emergency communications, child pornography,
739 online privacy, spam and parental controls. We just have to
740 ensure that we clarify this before we act and why is that?
741 Because obviously a resolution of disapproval is a very blunt
742 instrument to be used in such a very sensitive area.

743 Under the open Internet rules adopted by the FCC,
744 exceptions were created for broadband Internet access service
745 providers to engage in reasonable network management
746 including prioritizing emergency communications, protecting
747 networks against spam, blocking transfers of unlawful content
748 such as child pornography and accommodating end-user choices
749 regarding parental controls or security capabilities such as
750 to protect private information. I think we can all on the
751 committee agree on these issues but we have to make sure that
752 we preserve the authority of the FCC as we act by adding the
753 language that will accomplish that goal. Under the
754 ambiguities created by the Congressional Review Act, it is
755 unclear whether the FCC can adopt new rules that maintain
756 these important exceptions to meet the needs of public
757 safety, protection of children and shielding the networks
758 from spam.

759 Mr. Chairman, I believe few people in this room would
760 disagree that a broadband network provider must be able to
761 manage the traffic to promote these very important features
762 of an open Internet. If the resolution of disapproval
763 becomes law forbidding the FCC from reissuing rules in
764 substantially the same form, I am very concerned that the FCC
765 will not be able to offer such flexibility to broadband
766 providers promoting the public safety, dealing with child

767 pornography, protecting consumers against fraud and unfair
768 and deceptive practices. Therefore, I believe that my
769 amendment is critical in providing some clarity so that
770 broadband providers will be able to continue to ensure the
771 integrity of their networks and I hope that the members in
772 the majority can find a way of allowing us to add this in,
773 add this codicil in so that as the resolution of disapproval
774 moves forward that we are able to ensure that those
775 protections will be there for American families and that
776 those protections can be maintained.

777 And with that, I yield back the balance of my time.

778 Mr. {Walden.} The gentleman yields back the balance of
779 his time. As the counsel has testified, this does not have
780 the effect or does not affect the FCC's ability to regulate
781 the very things that you have discussed and as the members of
782 the Democrat side in your letter to me of March 7, you
783 admitted that this law that we are operating under precludes
784 amendment. So I just want to state that again. Let us
785 understand what is happening here.

786 Mr. {Terry.} Mr. Chairman.

787 Mr. {Walden.} The gentleman from Nebraska.

788 Mr. {Terry.} I insist on the point of order.

789 Mr. {Walden.} The gentleman insists on his point of
790 order.

791 The chair is prepared to rule that the amendment is not
792 germane to the joint resolution. The joint resolution
793 contains statutory prescribed language under the
794 Congressional Review Act. This amendment seeks to change
795 that language in a manner that would alter it from its
796 privileged form and would violate the fundamental purpose of
797 the joint resolution. It is therefore non-germane.

798 For what purpose does the gentleman from Pennsylvania
799 seek recognition?

800 Mr. {Doyle.} Thank you, Mr. Chairman. I have an
801 amendment at the desk.

802 Mr. {Walden.} The clerk will report the amendment.

803 The {Clerk.} Amendment to H.J. Res 37 offered by Mr.
804 Doyle.

805 [The amendment follows:]

806 ***** INSERT 4 *****

|
807 Mr. {Terry.} I reserve a point of order.

808 Mr. {Walden.} The gentleman from Nebraska reserves a
809 point of order.

810 Mr. Doyle, would you like to speak on your amendment?

811 Mr. {Doyle.} Yes, thank you, Mr. Chairman.

812 Mr. Chairman, my amendment simply tries to ensure that
813 even if the resolution of disapproval we are considering
814 today is enacted into law, broadband providers will not be
815 able to block or interfere with consumers' access the lawful
816 websites at will. That freedom is one of the most essential
817 aspects of Internet openness. It is what turned the Internet
818 into the economic engine it is today. But reading the
819 testimony today, some broadband providers want the right to
820 block what you get to see. The no-blocking principal has
821 been broadly accepted since it was included in the FCC's 2005
822 Internet policy statement. It has garnered the support from
823 both Democratic and Republican FCC commissioners.

824 Indeed, as early as 2004, then FCC Chairman Michael
825 Powell gave a speech in which he outlined four net freedoms.
826 The first freedom was that consumers should have access to
827 their choice of legal content. Chairman Powell stated at the
828 time that consumers have come to expect to be able to go
829 where they want on high-speed connections and those that have

830 migrated from dial-up would presumably object to paying a
831 premium for broadband if certain content were blocked. In
832 addition to being reaffirmed by the Internet policy
833 statement, the no-blocking principal is incorporated into the
834 Communications Opportunity Promotion and Enhancement Act of
835 2006, introduced by then Chairman Barton. All of my
836 Republican colleagues at the time who are still here voted in
837 favor of that bill.

838 Mr. Chairman, I regret that we are not able to consider
839 this amendment that reflects such fundamental principals of
840 the Internet that consumers have come to expect. The
841 resolution that we are considering today if ever enacted will
842 strip the Commission of its authority to police the most
843 egregious of conducts on the part of broadband providers such
844 as blocking consumers' access to lawful websites of their
845 choice. The Commission has done so before rightly when an
846 ISP called Madison River tried to block Vonage phone calls
847 but if Congress steps in and tells the FCC that it has no
848 role to prevent it, we will be giving broadband providers a
849 green light to block consumers any application content and
850 services they choose to block.

851 Now, Mr. Chairman, I am not saying that all providers
852 will do this but certainly some will. One witness today said
853 in his testimony that he wanted to block legal web traffic

854 from his consumers who want it. The incentives for mischief
855 are there and companies are profit-making enterprises, not
856 protectors of free speech.

857 I want to ask the counsel two questions just so that I
858 can have a better understanding of the practical impact of
859 this legislation. So I am just going to use Verizon as an
860 example since they sued the FCC first. Tell me, counsel,
861 what would happen if Verizon decides to block certain
862 political websites sponsored by the Tea Party or MoveOn.Org
863 because they decided those sites are too controversial and
864 they want to limit access so as not to offend their
865 consumers? If the CRA became law, could the FCC act to
866 prevent such blocking?

867 Mr. {Fried.} So, Mr. Doyle, I am trying to be fair to
868 the FCC, I can give both my opinion and what I think the FCC
869 argues. Ms. Eshoo wanted my opinion. Do you want my
870 opinion?

871 Mr. {Doyle.} Yeah, yeah, I am asking you if CRA becomes
872 law, in your opinion could the FCC prevent that blocking.

873 Mr. {Fried.} They could not adopt a substantially
874 similar rule. So the FCC believes they could and they could
875 try again.

876 Mr. {Doyle.} But you believe they could?

877 Mr. {Fried.} I believe they don't have the authority at

878 all which is why they can't even do it today regardless of
879 the net neutrality order.

880 Mr. {Doyle.} But is it your statement that if CRA were
881 to become law that you do not believe FCC would have the
882 authority to block Verizon or to stop Verizon from blocking?

883 Mr. {Fried.} No, sir, that is not my view. It would
884 take a court to determine that. A court would have to decide
885 whether the new regulations were substantially similar to the
886 ones that were disapproved.

887 Mr. {Doyle.} Well, I understand what you are saying but
888 what legal authority, under what legal authority would the
889 FCC be able to prevent blocking if the CRA passed? What
890 would be their authority to do that?

891 Mr. {Fried.} To be fair, this is where I disagree with
892 the FCC. The FCC believes it has authority under Section
893 706, Title II. We are not eliminating that authority. Now,
894 a court may agree with me eventually that those sections
895 don't give them the authority but if the FCC wins in court,
896 they can adopt other regulations under those sections so long
897 as they are substantially similar.

898 Mr. {Doyle.} But what the CRA intends to do right now
899 is that is covered under this. I mean blocking would be
900 covered under that?

901 Mr. {Fried.} These particular rules on blocking, that

902 is correct but if the FCC does have authority under Section
903 706.

904 Mr. {Doyle.} So if CRA were to become law, they
905 couldn't stop any company from blocking?

906 Mr. {Fried.} No, sir, that is not necessarily correct.

907 Mr. {Walden.} The gentleman's time has expired.

908 Mr. {Doyle.} I see my time has expired. Thank you, Mr.
909 Chairman.

910 Mr. {Terry.} Mr. Chairman.

911 Mr. {Walden.} If the gentleman would suspend for a
912 second.

913 This amendment seeks to extend the Commission's
914 authority beyond that provided for in statute. Isn't that
915 correct, Counsel?

916 Mr. {Fried.} That is my opinion. The FCC disagrees,
917 just to be fair.

918 Mr. {Walden.} Got it.

919 The gentleman from Nebraska.

920 Mr. {Terry.} Mr. Chairman, I must insist on the point
921 of order that the amendment is not germane to the joint
922 resolution. The joint resolution contains statutorily
923 prescribed language under the Congressional Review Act. This
924 amendment seeks to change that language in a manner that
925 would alter it from its privileged form and would violate the

926 fundamental purpose of the joint resolution and is therefore,
927 in my opinion, non-germane.

928 Mr. {Walden.} The chair is prepared to rule on the
929 gentleman's point of order. The chair finds the amendment
930 seeks to amend the joint resolution before us in a way that
931 will fundamentally alter the prescribed form of such joint
932 resolution under the Congressional Review Act. The gentleman
933 is therefore correct and the amendment is not germane and the
934 amendment is not in order.

935 For what purpose does the gentlewoman from California
936 seek recognition?

937 Ms. {Matsui.} I have an amendment at the desk.

938 Mr. {Walden.} I am shocked. The clerk will report the
939 amendment.

940 The {Clerk.} Amendment to H.J. Res 37, offered by Ms.
941 Matsui.

942 [The amendment follows:]

943 ***** INSERT 5 *****

|
944 Mr. {Terry.} Mr. Chairman, I reserve a point of order.

945 Mr. {Walden.} The gentleman reserves a point of order.

946 The chair recognizes the gentlewoman from California to
947 speak on her amendment.

948 Ms. {Matsui.} Thank you, Mr. Chairman.

949 Mr. Chairman, my amendment simply preserves a portion of
950 the open Internet rules imposing a transparency requirement
951 on broadband providers so that consumers and developers can
952 make informed choices. The transparency rule is also the
953 least controversial aspect of the rules and overwhelmingly
954 supported by broadband providers, high-tech companies and
955 consumer groups. In fact, during the hearing we just
956 completed all six of the witnesses including the three
957 majority-picked witnesses voiced their support for the FCC's
958 six principals on transparency. There is simply no reason
959 for a resolution of disapproval to throw out a rule that the
960 vast majority of stakeholders finds to be beneficial.
961 Imposing a transparency requirement on broadband providers is
962 commonsense. Consumers must have the information necessary
963 to make informed choices regarding the types and use of
964 broadband service they purchase. Transparency also generates
965 trust which in turn increases consumers' confidence in
966 broadband providers' practices thereby encouraging greater

967 broadband adoption. A transparency rule will also help
968 third-parties like edge providers, high-tech companies and
969 venture capitalists make informed decisions on when and how
970 to embark upon innovative projects and investments. Through
971 a disclosure of necessary technical requirements, new and
972 improved online content, applications, services and devices
973 will continue to be created.

974 Mr. Chairman, I strongly believe the transparency
975 requirement should be preserved yet the resolution being
976 considered today will remove this widely accepted measure to
977 protect consumers and innovators as well. Even worse, due to
978 the ambiguities in the Congressional Review Act, the FCC may
979 be prohibited from ever adopting a transparency requirement
980 regarding a provider's network management, performance and
981 commercial terms unless Congress acts first. It is unclear
982 how the FCC will be able to address consumer protection
983 issues with respect to broadband providers. We need to
984 consider these unintended consequences. Mr. Chairman, I urge
985 support of my amendment.

986 Mr. {Walden.} The gentleman from Nebraska.

987 Mr. {Terry.} Mr. Chairman, I insist on a point of
988 order.

989 Mr. {Walden.} The gentleman insists on his point of
990 order that it is not germane and the joint resolution

991 contains statutorily prescribed language under the
992 Congressional Review Act. This amendment seeks to change
993 that language in a manner that would alter it from its
994 privileged form and would violate the fundamental purpose of
995 the joint resolution. It is therefore my opinion that it is
996 not germane.

997 The chair is prepared to rule on the gentleman's point
998 of order. The chair finds the amendment seeks to amend the
999 joint resolution before us in a way that would fundamentally
1000 alter the prescribed form of such joint resolution under the
1001 Congressional Review Act. The gentleman is therefore correct
1002 that the amendment is not germane and the amendment is not in
1003 order.

1004 Who seeks recognition? Mr. Rush, for what purpose does
1005 the gentleman seek recognition?

1006 Mr. {Rush.} Mr. Chairman, I have a resolution at the
1007 desk.

1008 Mr. {Walden.} The clerk will report the amendment. Oh,
1009 which, Mr. Rush?

1010 Mr. {Rush.} Amendment number one.

1011 Mr. {Walden.} Amendment number one. The clerk will
1012 report Rush amendment number one. Could you describe what
1013 this amendment is? There appears that we have two of them,
1014 Mr. Rush.

1015 The {Clerk.} Yes, we have a 13, a 14 and a 64.

1016 Mr. {Walden.} Oh, 13, 14 and 64, what is the lucky one?

1017 Mr. {Rush.} It is the uniform consumer protection

1018 across wire line and wireless Internet access services. The

1019 uniform consumer protection across wire line and wireless

1020 Internet access services.

1021 Mr. {Walden.} Do you have a copy of it, Mr. Rush?

1022 Perhaps we could share with counsel. We are not sure we have

1023 that one.

1024 Mr. {Rush.} It is the 10 providers amendment.

1025 Mr. {Walden.} 10 providers amendment, maybe number 14.

1026 The {Clerk.} Number 14, okay, we got it.

1027 Mr. {Walden.} The clerk will report the amendment

1028 number 14.

1029 The {Clerk.} Amendment in the nature of a substitute to

1030 H.J. Res 37, offered by Mr. Rush of Illinois.

1031 [The amendment follows:]

1032 ***** INSERT 6 *****

|
1033 Mr. {Terry.} I reserve a point of order.

1034 Mr. {Walden.} The gentleman from Nebraska reserves a
1035 point of order.

1036 Mr. {Terry.} I do reserve a point of order.

1037 Mr. {Walden.} The gentleman from Illinois is recognized
1038 on his amendment.

1039 Mr. {Rush.} Thank you, Mr. Chairman.

1040 Mr. Chairman, when Congress debated the issue of net
1041 neutrality or the open Internet, it never did fully explore
1042 as a matter of policy how by increasing broadband competition
1043 the marketplace would punish open Internet bodies who might
1044 seek to block, degrade or discriminate among content,
1045 services, applications and non-harmful devices that connect
1046 to their networks. When the FCC adopted its open Internet
1047 report and order in December of 2010, much criticism was
1048 leveled at the Commission for not extending equal protection
1049 to wire line and wireless Internet traffic requirements. I
1050 am particularly concerned therefore that these rules favor
1051 wire line broadband subscribers notwithstanding the fact
1052 that more and more Internet access traffic is being sent and
1053 received over wireless devices, smart phones, PC tablets and
1054 across wireless facilities. This would acutely affect
1055 minorities and lower-income individuals and households.

1056 Repeated studies have shown that these demographic groups are
1057 more prone to subscribe to wireless broadband access rather
1058 than through home or fixed broadband. For example, a few
1059 Internet and American live project servers published last
1060 year found that 64 percent of African-Americans and 63
1061 percent of English-speaking Hispanics access the Internet
1062 through wireless devices compared to 57 percent of whites.

1063 The amendment I am offering today will require the FCC
1064 to modify its open Internet report and order to apply uniform
1065 protections to wire line and wireless traffic if it finds
1066 that there are fewer than 10 providers of mobile broadband
1067 Internet access service in an applicable service area. The
1068 amendment goes further to establish that the threshold speeds
1069 in making the provider number determination are three
1070 megabytes per second for download speeds and 768 gigabytes
1071 per second for upload speeds. Because the amendment does not
1072 specify which Internet access service are covered be they
1073 cell, cable modem, fiber optics, mobile broadband or other
1074 high-speed Internet access but rather speaks only to
1075 transmission speeds, it is technology neutral in its effect.
1076 This amendment would not only combat the persisting problems
1077 of what has been called the digital divide, it would also
1078 address an hopefully reverse the creation of an emerging
1079 vacuum which I have referred to as being the device written

1080 divide.

1081 Mr. Chairman, with that I yield back the balance of my
1082 time.

1083 Mr. {Walden.} The gentleman yield back the balance of
1084 his time.

1085 The gentleman from Nebraska?

1086 Mr. {Terry.} Mr. Chairman, I insist on my point of
1087 order that the amendment is not germane to the joint
1088 resolution. The joint resolution contains statutorily
1089 prescribed language under the Congressional Review Act. The
1090 amendment seeks to change that language in a manner that
1091 would alter it from its privileged form and would violate the
1092 fundamental purpose of the joint resolution. I believe
1093 therefore it is non-germane.

1094 Mr. {Walden.} The chair is prepared to rule on the
1095 gentleman's point of order. The chair finds the amendment
1096 seeks to amend the joint resolution before us in a way that
1097 would fundamentally alter the prescribed form of such joint
1098 resolutions under the Congressional Review Act. The
1099 gentleman is therefore correct, the amendment is not germane
1100 and it is not in order.

1101 Who seeks recognition? The gentleman from Illinois, Mr.
1102 Rush, for what purpose do you seek recognition?

1103 Mr. {Rush.} Mr. Chairman, I have an amendment at the

1104 desk.

1105 Mr. {Walden.} Amendment number?

1106 Mr. {Rush.} Thirteen.

1107 Mr. {Walden.} Amendment number 13, gentlemen, the clerk
1108 will report the amendment.

1109 The {Clerk.} Amendment in the nature of a substitute to
1110 H.J. Res 37, offered by Mr. Rush of Illinois.

1111 [The amendment follows:]

1112 ***** INSERT 7 *****

|
1113 Mr. {Terry.} Mr. Chairman, I reserve a point of order.

1114 Mr. {Walden.} The gentleman from Nebraska reserves a
1115 point of order.

1116 The gentleman is recognized on his amendment.

1117 Mr. {Rush.} Mr. Chairman, last year once it became
1118 known that an employee of a certain large Internet service
1119 company had been collecting personal consumer data sent over
1120 the unsecured wireless networks, the revelation made
1121 international news. These practices and the facts
1122 surrounding these events became the subject of an
1123 investigation by the Federal Trade Commission's Bureau of
1124 Consumer Protection. Privacy data authorities around the
1125 globe and some prominent lawmakers and some government
1126 officials here in the U.S. were stunned when the FCC ended
1127 its inquiry into the matter. Following the FCC's decision to
1128 close this investigation, circulation involved in an LCC
1129 which is another cut on the privacy meet could have been
1130 looking into the matter. As a matter of law, the FCC nor the
1131 LCC can neither confirm nor deny what investigations or
1132 enforcement actions it is not contemplating taking.

1133 This second amendment, Mr. Chairman, which I am offering
1134 today will clear the possible confusion as to whether the FCC
1135 could continue to undertake investigations of alleged privacy

1136 violations committed by communications network providers.
1137 Recently I introduced H.R. 611, the Best Practices Act. As
1138 one of the leading proponents in U.S. commerce of passing
1139 comprehensive Federal consumer privacy legislation, I know
1140 personally that consumers do not care less about where or
1141 what agency authority to enforce privacy rules and laws end
1142 and where another protection agency's authority begins. They
1143 just want to be assured that their personal information
1144 remains protected. The Republican resolution would throw all
1145 of this into question without voting upon and approving my
1146 amendment and with that, Mr. Chairman, I ask that my
1147 amendment be approved, and I yield back the balance of my
1148 time.

1149 Mr. {Walden.} The gentleman yields back the balance of
1150 his time.

1151 The gentleman from Nebraska.

1152 Mr. {Terry.} Thank you, Mr. Chairman, I insist on a
1153 point of order that the amendment is not germane to the joint
1154 resolution. The joint resolution contains statutorily
1155 prescribed language under the Congressional Review Act. Mr.
1156 Rush's amendment seeks to change that language in a manner
1157 that would alter it from his privileged form and would
1158 violate the fundamental purpose of the joint resolution. It
1159 is therefore non-germane.

1160 Mr. {Walden.} The chair is prepared to rule on the
1161 gentleman's point of order. The chair finds that the
1162 amendment seeks to amend the joint resolution before us in a
1163 way that will fundamentally alter the prescribed form of such
1164 joint resolutions under the Congressional Review Act. The
1165 gentleman is therefore correct and the amendment is not
1166 germane. The amendment is not in order.

1167 For what purpose does the gentleman from Illinois seek
1168 recognition?

1169 Mr. {Rush.} Mr. Chairman, I have a last amendment. It
1170 is entitled, Internet Communications and Content Religious in
1171 Nature.

1172 Mr. {Walden.} The clerk will report the amendment.

1173 The {Clerk.} Amendment to H.J. Res 37, offered by Mr.
1174 Rush.

1175 {The amendment follows:]

1176 ***** INSERT 8 *****

|
1177 Mr. {Terry.} I reserve the point of order.

1178 Mr. {Walden.} The gentleman from Nebraska reserves
1179 point of order.

1180 The gentleman from Illinois is recognized on his
1181 amendment.

1182 Mr. {Rush.} Mr. Chairman, last week I reintroduced the
1183 Bereaved Consumers Bill of Rights Act, H.R. 900. I initially
1184 authored that legislation in the 111th Congress when it was
1185 discovered in the summer of 2009, that abominable acts of
1186 grave desecration and grossly negligent recordkeeping and
1187 maintenance had taken place in the Burr Oak Cemetery in
1188 Alsip, Illinois which is located in my district. Thanks to
1189 the support of many of the members of this subcommittee in
1190 the 111th Congress, we shaped and marked up the bereaved
1191 bill, moving it out of full committee to await a House vote.
1192 As part of that process, religious organizations that own and
1193 operate cemeteries and cemetery funeral home combos weighed
1194 in personally with members of Congress when they also used
1195 the Internet to make their views known to the public but also
1196 to support us here on the Hill.

1197 If the Republican resolution is marked up and moved out
1198 of subcommittee without any called votes on amendments such
1199 as this that I am now attempting to offer, those religious

1200 organizations and groups might not have been as effective in
1201 making their case for amending the bereaved bill.
1202 Accordingly, my amendment would still allow the FCC to
1203 propose and if not rule to protect any Internet access
1204 broadband provider regardless of technology from blocking,
1205 degrading or discriminating against Internet communications
1206 that are religious in nature. Mr. Chairman, I ask for the
1207 support of the committee and with that I yield back the
1208 balance of my time.

1209 Mr. {Terry.} Mr. Chairman.

1210 Mr. {Walden.} The gentleman yields back the balance of
1211 his time.

1212 The gentleman from Nebraska.

1213 Mr. {Terry.} I insist on my point of order. The
1214 amendment is not germane to the joint resolution. The joint
1215 resolution contains statutorily prescribed language under the
1216 Congressional Review Act. This amendment seeks to change
1217 that language in a manner that would alter it from its
1218 privileged form and would violate the fundamental purpose of
1219 the joint resolution and therefore is non-germane.

1220 Mr. {Walden.} The chair is prepared to rule on the
1221 gentleman's point of order. The chair finds that this
1222 amendment seeks to amend the joint resolution before us in a
1223 way that will fundamentally alter the prescribed form of such

1224 joint resolutions under the Congressional Review Act. The
1225 gentleman is therefore correct and the amendment is not
1226 germane. The amendment is not in order.

1227 Mr. {Rush.} Mr. Chairman, I am shocked and shaken by
1228 the ruling of the chair.

1229 Mr. {Walden.} I understand that and I am sorry.

1230 Mr. {Terry.} Do we need public safety here?

1231 Mr. {Walden.} There is not much more I can say on that
1232 point of order.

1233 Anyone else seek recognition? For what purpose does the
1234 gentleman from Pennsylvania seek recognition?

1235 Mr. {Doyle.} To strike the last word.

1236 Mr. {Walden.} The gentleman is recognized to strike the
1237 last word.

1238 Mr. {Doyle.} And I won't take all the time.

1239 Mr. {Walden.} I appreciate that.

1240 Mr. {Doyle.} I just want to get clarification from
1241 counsel. Mr. Fried, you are very good and but I want to get
1242 a more complete answer from you. So in your opinion, not the
1243 FCC's, under what specific authority title and section could
1244 the FCC rely upon to take action against a carrier who blocks
1245 a Tea Party website?

1246 Mr. {Fried.} Let me clarify, I do not think they have
1247 that authority. The FCC thinks they have that authority

1248 under Section 706 and others.

1249 Mr. {Doyle.} If the CRA would pass, could they use
1250 Section 706 to stop blocking.

1251 Mr. {Fried.} If 706 gives them that authority then yes,
1252 as long as it is not a substantially similar rule and they
1253 have authority elsewhere in the statute, they can adopt other
1254 rules that are not substantially similar to the ones that
1255 would be disapproved. So earlier Ms. Matsui had an amendment
1256 about a very specific rule already in the order. She is
1257 correct, that rule could not be adopted identically because
1258 that certainly would be substantially similar. I would argue
1259 they can't adopt it because they don't have authority but if
1260 the FCC is correct that they have authority, they can adopt
1261 other rules that are not substantially similar.

1262 Mr. {Doyle.} So you don't believe any title or any
1263 section gives them the authority to do that?

1264 Mr. {Fried.} The authority that the FCC has cited in
1265 the order, I personally do not believe. That may be resolved
1266 in the court case if it gets there that Verizon has taken.
1267 The issue of the authority is very separate from the issue of
1268 the CRA in this order. All the CRA would do is say these
1269 specific rules cannot be readopted. If the FCC has authority
1270 somewhere else, they can try again.

1271 Mr. {Doyle.} And that is what I am asking, where else

1272 in or what section or title could they look to?

1273 Mr. {Fried.} I don't but the FCC says Section 706,
1274 Title II.

1275 Mr. {Doyle.} But they wouldn't be able to use that,
1276 right?

1277 Mr. {Fried.} They could use that authority, just not
1278 for the same rules. They would have to do different rules
1279 and they could cite that authority if the courts say they
1280 have that authority.

1281 Mr. {Doyle.} Yeah, okay, Mr. Chairman, you have been
1282 very gracious and I will not take up anymore of your time.

1283 Mr. {Walden.} The gentleman yields back his time.

1284 Any further discussion? If not, the question now occurs
1285 on favorable reporting the resolution. All those supporting
1286 favorably reporting the resolution will vote aye. Aye, we
1287 are in training here. All those opposed will vote no.

1288 Ms. {Eshoo.} I would like a roll call vote.

1289 Mr. {Walden.} A roll call vote has been called for.

1290 The clerk will call the roll.

1291 The {Clerk.} Mr. Terry?

1292 [No response.]

1293 The {Clerk.} Mr. Stearns?

1294 [No response.]

1295 The {Clerk.} Mr. Shimkus.

1296 [No response.]

1297 The {Clerk.} Mrs. Bono Mack?

1298 [No response.]

1299 The {Clerk.} Mr. Rogers?

1300 [No response.]

1301 The {Clerk.} Mrs. Blackburn?

1302 [No response.]

1303 The {Clerk.} Mr. Bilbray?

1304 [No response.]

1305 The {Clerk.} Mr. Bass?

1306 [No response.]

1307 The {Clerk.} Mr. Gingrey?

1308 Mr. {Gingrey.} Aye.

1309 The {Clerk.} Mr. Gingrey votes aye.

1310 Mr. Scalise?

1311 [No response.]

1312 The {Clerk.} Mr. Latta?

1313 Mr. {Latta.} Aye.

1314 The {Clerk.} Mr. Latta votes aye.

1315 Mr. Guthrie?

1316 Mr. {Guthrie.} Aye.

1317 The {Clerk.} Mr. Guthrie votes aye.

1318 Mr. Kinzinger?

1319 Mr. {Kinzinger.} Aye.

1320 The {Clerk.} Mr. Kinzinger votes aye.
1321 Mr. Barton?
1322 Mr. {Barton.} Aye.
1323 The {Clerk.} Mr. Barton votes aye.
1324 Mr. Upton?
1325 [No response.]
1326 Ms. Eshoo?
1327 Ms. {Eshoo.} No.
1328 The {Clerk.} Ms. Eshoo votes no.
1329 Mr. Markey?
1330 Mr. {Markey.} No.
1331 The {Clerk.} Mr. Markey votes no.
1332 Mr. Doyle?
1333 Mr. {Doyle.} No.
1334 The {Clerk.} Mr. Doyle votes no.
1335 Ms. Matsui?
1336 Ms. {Matsui.} No.
1337 The {Clerk.} Ms. Matsui votes no.
1338 Mr. Barrow?
1339 Mr. {Barrow.} No.
1340 The {Clerk.} Mr. Barrow votes no.
1341 Mr. Towns?
1342 [No response.]
1343 Mr. Pallone?

1344 [No response.]

1345 Mr. Rush?

1346 [No response.]

1347 Ms. DeGette?

1348 Ms. {DeGette.} No.

1349 The {Clerk.} Ms. DeGette votes no.

1350 Mr. Waxman?

1351 [No response.]

1352 Mr. Walden?

1353 Mr. {Walden.} Aye.

1354 The {Clerk.} Mr. Walden votes aye.

1355 Mr. {Walden.} Are there members who have not voted?

1356 Mr. Waxman has to leave for an interview but he wants to vote

1357 no first.

1358 The {Clerk.} Mr. Waxman votes no.

1359 Mr. {Walden.} Mr. Towns?

1360 Mr. {Towns.} No.

1361 The {Clerk.} Mr. Towns votes no.

1362 Mr. {Walden.} Mr. Shimkus?

1363 Mr. {Shimkus.} Yes.

1364 The {Clerk.} Mr. Shimkus votes yes.

1365 Mr. {Walden.} Mr. Rogers?

1366 Mr. {Rogers.} Mr. Rogers votes yes.

1367 The {Clerk.} Mr. Rogers votes yes.

1368 Mr. {Walden.} Mr. Upton?
1369 Mr. {Upton.} Votes yes.
1370 The {Clerk.} Mr. Upton votes yes.
1371 Mr. {Walden.} Mr. Scalise?
1372 Mr. {Scalise.} Aye.
1373 The {Clerk.} Mr. Scalise votes yes.
1374 Mr. {Walden.} Are there any members not recorded who
1375 wish to be recorded? Mr. Stearns?
1376 Mr. {Stearns.} Yes.
1377 The {Clerk.} Mr. Stearns votes yes.
1378 Mr. {Walden.} Are there other members not recorded
1379 wishing to be recorded? You are not recorded. How would you
1380 like to be recorded?
1381 Mr. {Bilbray.} Mr. Bilbray votes aye.
1382 Mr. {Walden.} Mr. Bilbray votes aye.
1383 The {Clerk.} Mr. Bilbray votes aye.
1384 Mr. {Walden.} Any other members wishing to be recorded?
1385 The clerk will report the tally.
1386 The {Clerk.} Mr. Chairman, 15 aye, 8 nays.
1387 Mr. {Walden.} Fifteen ayes and 8 nays, the resolution
1388 is approved, let me make sure I read it right, is agreed to
1389 and the resolution is ordered favorably reported. Is there
1390 any further business to come before the subcommittee? If
1391 not, the chair wants to thank all of the members and the

1392 staff. The subcommittee stands adjourned subject to the call
1393 of the chair.

1394 [Whereupon, at 4:42 p.m., the Subcommittee was
1395 adjourned.]