

*Prepared Remarks of S. Derek Turner, Research Director, Free Press
before the
United States House of Representatives, Committee on Energy and Commerce
Subcommittee on Communications, Technology and the Internet
regarding
H.J. Res 37
Disapproving the Rule Submitted by the Federal Communications Commission
With Respect to Regulating the Internet and Broadband Industry Practices
March 9, 2010*

Good morning Chairman Walden, Ranking Member Eshoo, [Mr. Upton, Mr. Waxman] and Members of the Committee. On behalf of Free Press, as the coordinator of the Save The Internet coalition, representing more than 800 groups and their 10 million members, I appreciate the opportunity to offer the perspective of Internet users in today's hearing on House Joint Resolution 37.

Let me begin by acknowledging an often-forgotten truth.

The principle of non-discrimination, which is the bedrock of Net Neutrality policy, was not always the political football it is today.

Unfortunately, the debate around non-discrimination has become immune to the calming powers of historical fact, and susceptible to the ills of powerful self-interest politics and false partisan frames.

This recent rhetorical drift is very much at odds with the long bipartisan effort to prevent market power abuses by owners of our nation's critical communications infrastructure.

It was the Nixon administration that put in place strong rules of non-discrimination in order to ensure abuses of market power would not stifle the growth of an infant network computing industry.

And this successful framework was later improved upon by both the Carter and Reagan administrations.

In the Telecom Act of 1996, a bipartisan Congress recognized that in order to foster new industries, we needed the FCC to act to ensure everyone had open access to the information superhighway.

Look no further than section 10 to see that Congress intended nondiscrimination to survive any deregulation.

In the early 2000's the FCC began to abandon the Telecom Act's blueprint for reasoned deregulation through forbearance. However the Commission still recognized that the underlying non-discriminatory outcomes were worth preserving.

FCC Chairman Michael Powell first articulated the "four Internet freedoms," that subsequently served as the basis for the open Internet provisions in the COPE Act, adopted by the House in 2006.

And Chairman Kevin Martin took action in 2008 to stop Comcast's secret discrimination against certain Internet content.

But recently we've seen this debate move away from the shared goal of preserving the open Internet.

The problem of market power in communications networks is very real, and increasingly politically inconvenient.

As a result, we've seen those who used to recognize this problem abandon those views.

Some policymakers now seem resigned to the misguided notion that the duopoly Internet access market is perfectly competitive.

[This is unfortunate, because] I believe we all agree the Internet should be preserved as an open platform.

Allowing gatekeepers to erect barriers to speech and commerce is an unacceptable outcome, and public policy should be used to prevent it.

If we can agree that ensuring access to an open platform is a worthy policy goal, then we have a duty to confront the reality that network owners have strong incentives to close the platform and favor their own content at the expense of everyone else's.

So the key question is what's the best way to preserve the good outcomes and prevent the bad ones?

I recognize that some of you are uncomfortable with the FCC's open Internet order. My organization too ultimately opposed it.

We felt that it failed to adequately preserve and protect the open Internet.

However, we oppose the Resolution of Disapproval.

It will leave consumers completely unprotected.

It will remove the limited certainty that the FCC's rules provide.

Most importantly, it will prevent the FCC from addressing blatant censorship and anti-competitive activities in the future.

This resolution is an unnecessary and dangerous over-reaction to a policy framework that is at its core very similar to the bipartisan COPE Act of 2006.

And make no mistake; adoption of this resolution will *increase* market uncertainty and harm economic growth.

Most ISPs have told Wall Street the truth -- that these rules are no burden.

So to borrow a very tired old phrase, the Resolution of Disapproval is a solution in search of a problem.

Innovators in the applications and content sector believe they now have a certain, albeit imperfect framework to live under.

This resolution, if enacted, will remove that certainty and subject them to the discriminatory whims of the ISPs.

There may be much to dislike about what this FCC did and how it did it.

But the fundamental point here is we cannot simply set up a false choice between what the FCC did, and no policy at all.

We can't wish away the concentrated market structure.

We can't simply hope the duopoly ISPs will make decisions in the best interest of all Americans.

I am a believer in free markets, but I understand the immovable barriers to effective competition in markets like this that have natural monopoly characteristics.

Internet users need Congress to look at the market in a realistic manner.

And they can not afford for Congress to remove what little oversight is left.

So instead of pursuing this perilous path, we urge this body to remember its commitment to protecting non-discrimination, and work on constructive solutions that will benefit all Americans.

Thank you for your attention and I look forward to your questions.