



The Daily Dish

Net Neutrality (Again)

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Eakinomics: Net Neutrality (Again)

It feels like Congress votes on net neutrality more often than the Trump Administration has “Infrastructure Week.” Yesterday the House of Representatives [voted](#) 232-190 to pass the “Save the Internet Act” that would reinstate the Obama-era Federal Communications Commission (FCC) regulations.

What does that vote mean for the future of the Internet? Nothing — and not just because Senate Majority Leader Mitch McConnell [declared](#) that the bill is dead on arrival in the Senate. It’s because Congress really cannot turn back the clock and restore the 2015 [Open Internet Order](#). The bill, the vote, and the fanfare is all about the 2020 election and not about the rules that apply to Internet-based things like the Daily Dish.

Here is why. Until the 2015 regulations, the Federal Trade Commission (FTC) was in charge of privacy protection for U.S. businesses, including Internet Service Providers (ISPs). When the FCC declared, however, that ISPs were “common carriers” to be regulated under Title II of the Communications Act of 1934 — that is, the same as old-fashioned long-distance telephone companies — it also triggered FCC enforcement of common carrier privacy rules. The FTC was shut out.

Now, roll the clock forward to 2017, when the Republican-controlled House and Senate used the Congressional Review Act ([CRA](#)) to roll back those FCC privacy rules. An important feature of a CRA vote is that it not only removes a regulation, it precludes the agency from ever promulgating another regulation on that issue barring a new act of Congress. The CRA vote put the FCC out of the privacy-rules business. That was not a problem because the FCC re-classified the ISPs for regulation under Title I, as they had been from the beginning.

Now the FCC is regulating the Internet and the FTC is regulating privacy. But IF the Save the Internet Act were to become law, the FTC would be out of regulating privacy business for the ISPs and the FCC would be precluded from issuing privacy regulations for them. Internet privacy would become a policy black hole.

The only way forward is for Congress to pass bipartisan legislation that clearly identifies the regulatory powers of the FCC over the Internet and leaves privacy regulation in the hands of the FTC. When such a bill reaches the floor of either chamber, pay attention. Until then, do not waste your energy and stay focused on the next Infrastructure Week!