



April 4, 2011

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Washington, DC 20510

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TREASURER

Re: **ACLU opposes H.J. Res. 37, disapproving the rule submitted by the Federal Communications Commission with respect to regulating the Internet and broadband industry practices**

Dear Representative:

We write today on behalf of the American Civil Liberties Union (ACLU) to urge you to oppose H.J. Res. 37, disapproving the rule submitted by the Federal Communications Commission (FCC) with respect to regulating the Internet and broadband industry practices. The ACLU is a non-partisan organization consisting of more than a half million members, countless additional activists and supporters, and 53 affiliates nationwide dedicated to the preservation of individual rights under the Constitution. By disapproving the FCC's open internet rule, H. J. Res 37 would give implicit government approval to private interests to chill the most open marketplace of ideas in our history – the internet.

Utilizing the Congressional Review Act to overturn net neutrality and internet openness rules threatens to change the fundamental nature of the internet. It would not only eliminate the current FCC rules, it would eliminate the FCC's ability to adopt any regulation in this area and threaten free speech, innovation, and commerce.

Net neutrality and these rules stand for a simple proposition: that internet providers should not be able to interfere with communications or computer applications. Providers should deliver data from its origin to its destination, not block, slow down or de-prioritize information because of its content.

Because of the importance of the internet and the control that providers have over it, network neutrality is one of the foremost free speech issues of our time. Freedom of expression isn't worth much if the forums where people

actually make use of it are not themselves free. And in the modern age, the internet is without doubt the primary place where Americans exercise their right to free expression. It's a newspaper, an entertainment medium, a reference work, a therapist's office, a soapbox, a debating stand. It is the closest thing ever invented to a true "free market" of ideas.

Free speech has been a central mission of the ACLU since its founding in 1920. From its origins amid the repression of the First World War, when an American could receive a 10-year prison sentence for writing a letter to the editor, the ACLU has been instrumental in defending and expanding the rights of free expression, and it continues to do so on the internet—having been a principal participant in nearly all of the internet censorship and neutrality cases that have been decided by the United States Supreme Court in the past two decades, including *Reno v. ACLU*, *Ashcroft v. ACLU*, *Ashcroft v. Free Speech Coalition* and *NCTA v. Brand X*.¹

The First Amendment, of course, protects speech only from the government. But access to the internet is provided by private corporations enabled by government, and protecting the same interests and values that the First Amendment protects, requires in this case that the government create strong policies against incursion by companies that are, at root, profit-seeking rather than civic-minded. That is why the ACLU has long supported network neutrality.

The openness of American society in general, and free speech in particular, have played a crucial role in supporting the artistic, intellectual, political, and social vitality of our nation, and therefore its economic vitality as well. The requirements of free speech and the requirements of profit-oriented corporations are too different. Free speech requires the protection of minority and unpopular—sometimes radically unpopular—viewpoints and expressions.

As Isaiah Berlin put it, "Freedom for the wolves has often meant death to the sheep."² "Freedom" for giant telecoms to violate network neutrality will mean injury or death to freedom and innovation for individuals, upstart companies, and the proper functioning of markets that depend on the internet infrastructure—including, quite possibly, the "marketplace of ideas." Without network neutrality rules, the online world will be transformed into a

¹ 521 U.S. 844 (1997), 542 U.S. 656 (2004), 535 U.S. 234 (2002), 545 U.S. 967 (2005).

² Isaiah Berlin, "Introduction," *Four Essays on Liberty* (Oxford: Oxford University Press, 1969), p. xlv.

place where the thoughts, expressions, publications, and other content of the favored few will receive preference over those of the disfavored.

For all of these reasons we urge you to oppose H.J.Res. 37. Because of the importance of this issue to civil liberties, the ACLU will be adding this vote to its Congressional scorecard.

Sincerely,

A handwritten signature in black ink that reads "Laura W. Murphy". The signature is written in a cursive style with a long, sweeping underline.

Laura W. Murphy
Director, Washington Legislative Office

A handwritten signature in black ink that reads "Christopher R. Calabrese". The signature is written in a cursive style with a long, sweeping underline.

Christopher R. Calabrese
Legislative Counsel