

**Congressman Jared Polis**  
**Rules Statement – SJRes 34-*Providing for congressional disapproval of the rule submitted by the FCC relating to Protecting the Privacy of Customers of Broadband***

**March 28, 2017**

I thank the gentleman for yielding me the customary 30 minutes, and I yield myself such time as I may consume.

Intro

M\_\_ Speaker, I rise in opposition to the rule and the underlying resolution. This resolution undermines fundamental privacy for every internet user, and was rushed through the Senate when the public was focused on the American Health Care Act last week.

Before I discuss the disastrous facets of this resolution, I wish to review the broken procedural process. Again, we have a bill that is deliberated under a closed rule. I can't truly say it's a surprise, since during this session; there have been absolutely NO open rules and more than HALF of the rules have been completely closed. While this bill is presented under another completely closed rule, it is troubling because last year, Speaker Ryan committed to regular order. This is not regular order.

You see, this bill was pushed through expeditiously and under the radar, during a time when the American public was drowning in headlines regarding false accusations of wiretapping, concerns about senior administration officials colluding with U.S. adversaries, and the looming threat to their health care.

As has become the norm for this Congress, this CRA, which affects PERMANENT and IRREVOKABLE change, bypassed any hearings. I can only interpret this as deliberate obfuscation in an effort to protect corporate interests while putting individual consumers at risk.

Why use the CRA at all? The FCC had recently taken steps to re-evaluate this rule and Commissioner Pai even paused their implementation for a careful examination. Why not let the FCC do their job? There are two reasons I can think of for Congress to step in and use the CRA authority, which prohibits future implementation of similar rules.

The first is for exactly that reason-the CRA effects permanent change. This means it will be virtually impossible to protect the privacy of Americans who are using broadband ever again, unless Congress takes legislative action.

The second is that the FCC has an established “notice and comment” period, which allows for public comment on new rules. What better way to avoid government transparency and marginalize consumer voices, than with this rushed legislation? What better way to ensure that individuals do not get in the way of corporate profit than to permanently roll back their protections while bypassing their ability to weigh in.

So, what exactly is at stake? On October 27, 2016, after a six-month rulemaking process that was open to public comment, the FCC adopted a rule to protect consumer privacy. The rule does three things. It requires broadband internet access service providers to obtain opt-in consent before using or sharing sensitive information, such as web browsing history; it requires these providers to use “reasonable measures” to protect the cybersecurity of our data; and requires that broadband providers notify consumers in the event of a breach of their information. That is what this bill seeks to PERMANENTLY undo-- “reasonable measures.”

**Take a moment to picture the implications of this rollback. This is not just a collection of your internet usage and data from one website, but bulk collection of all of your network traffic.**

A corporate broadband provider can collect every search, every website visited, every article read online, see how often you log into and use your various online accounts and even, in some cases, collect your location. Think about what someone could conclude from this information about you-your overall health, risk activity, political affiliation, preferences. What could they do with that information? Could they change pricing of goods and services depending on your income and past purchasing behaviors? Could your sensitive financial information be used to steer you into higher cost financial products? This rule change will literally allow broadband providers to have access to your entire personal life on a network and sell it, without even worrying about “reasonably” protecting that information.

Let's talk about the first protection the rule provides-giving consumers choice over whether they agree to share their personal lives with their broadband provider. Some have argued that since edge providers like Facebook and Google are governed under a separate set of less restrictive rules, leveling the playing field is the right thing to do. There are so many things wrong with that argument, so I will break it down.

Proponents for this bill are arguing that because there are not adequate protections in the social media and edge provider sphere, the standard should be lower for

broadband internet service providers. In fact, just weeks ago, the Department of Justice indicted two Russian spies for hacking Yahoo and stealing 500 million consumers' accounts. This is not the time to start relaxing rules simply to make it easier for corporations to profit. If anything, we should be examining the inadequate protections in the social media and edge provider space and considering whether we need to call for stronger consumer protections.

In today's day and age, not having internet access is not an option for many Americans. That is why we have seen many proposals in this Chamber related to expanding broadband infrastructure to ensure universal access, even in the most rural areas. Most consumers only have a choice of one or two high-speed broadband providers in their region. It is not as if the market is crowded with providers and users can shop around until they find a provider that offers a privacy policy that makes them comfortable. This creates a "take it or leave it" environment, where an internet user must accept whatever the company offers, while still paying for it, I might add.

In contrast, I know many people who still do not have or use social media accounts or have deleted accounts, due to privacy concerns. Social media is an optional platform-where access to the internet it becoming necessary. Schools are putting homework assignments online;

financial institutions are moving towards more online services; and employees are given more flexibility to work remotely. Broadband providers are the backbone of how we communicate in this day and age. From personal interactions to business and school, broadband is essential to keeping our country functioning.

Companies like Facebook and Google are free to users. They raise revenue through advertising. Last I checked, most Americans last internet bill was anything but free. I understand that in the universe of free apps and tools, as many are fond of saying, I am not the consumer, but the product being sold. However, when I pay monthly bills for a service, make no mistake about it, I am a consumer and expect the protections that go with that status.

Supporters of this bill also mention how this “levels the playing field” for broadband providers, but keep in mind that ISPs are our gateway to the internet. They do not see just a small set of information I choose to access or post through one platform, but rather ALL information I access on the internet. They already overmatch their competitors by a long shot. They are at no disadvantage. There is no comparison.

The second protection the rule offers is to require “reasonable measures” be taken to protect that encyclopedia of your data they want to collect. While we

are only several months into this session of Congress, we have already held several hearings within this chamber to explore cybersecurity concerns and incidents, some in which adversaries hacked into servers and absconded with a wealth of sensitive and personal information for their own malicious purposes. Given these incidents, how can any member of this chamber seriously entertain the idea of permanently rolling back a rule that requires “reasonable measures” be taken to protect consumer data? That is absurd.

The third protection under the FCC rule is that consumers whose data has been breached in a cybersecurity incident should be notified and given the opportunity to protect themselves from fraud. This bill will permanently do away with this. To whose benefit? I know I’d like to know if my credit card information was hacked, wouldn’t you? Or even worse- if someone was able to obtain even more personal information -- like their childrens’ names, home address, and information about the schools they attend.

Some have argued that this rule is confusing to consumers, but they’re not difficult to understand at all. If you want to allow broadband providers to be able to collect and sell your data, you should be able to “opt-in”. If not, don’t. If my provider collects my data, they should protect it. If they fail to do so and my data ends up in the

wrong hands, they should tell me. Pretty simple. I personally find it somewhat insulting that someone would assume my constituents and the American people are “confused” by this concept.

You may hear that the FCC has the authority, without this rule, to enforce consumer privacy on a case-by-case basis. Talk about confusing! An individual consumer must navigate the FCC rule and its protections and then use their personal resources to sue for these protections. How is this less confusing or better for an individual consumer? Why not simply put a set of common sense rules in place instead of putting the burden on individuals?

In a world where Moore’s law has been proven true-- that the future of cyberspace changes at an exponential rate, using a blunt instrument, which prohibits similar rules from ever being enacted, is ridiculously short sighted.

I would like to read from two letters from groups who are opposed to this CRA. The first is a coalition of 19 media justice, consumer protection, civil liberties and privacy groups. They are concerned that “without these rules, providers could use and disclose customer information at will. The result could be extensive harm caused by breaches or misuse of data.” They remind us that “The FCC’s order simply restores people’s control over their

personal information and lets them chose the terms on which the ISPs can use it, share it, or sell it...The rules merely require the ISPs to obtain that informed consent” before selling or sharing customer information.

The second is from ConsumersUnion, the policy arm of Consumer Reports. They too fail to understand why the claim for customer confusion is being made by those who “would strip customers of their privacy rights and...leave them with no protections at all.” They address the fallacy that the FTC can pick up the mantle of privacy protection if the FCC rule is rolled back. “The FTC does not enjoy the robust rulemaking authority that the FCC does. As a result, consumers would have to **wait for something bad to happen** before the FTC would step in to remedy a violation of privacy rights. Any fondness for the FTC’s approach to privacy is merely support for dramatically weaker privacy protections...” They highlight that passing this legislation will leave a privacy vacuum, and that given the CRA prohibition on passing similar rules in the future, this vacuum will be a lasting one.

I would like to submit both of these letters for the record.

Like these groups, I also feel that consumer choice and privacy is worth defending. I’d like to enter my own op/ed, published in the Huffington Post last week, to call attention to this issue. I am heartened to hear that there

was increased attention to this issue over the past few days, due to the efforts of consumer advocacy groups to ensure it was not buried beneath the other critical issues of recent weeks.

I reserve the balance of my time.

Conclusion:

Simply put -- this is about profit over protection. Supporters of this legislation put forward arguments that make it sound like they are trying to protect consumers from “confusion” and eliminate burdensome overregulation where it is not needed. What they are really trying to do is shift the burden for “reasonable measures” for cyber security data protection from the internet providers with their teams of experts and vast resources to each and every consumer, who is already paying for services. At the same time, they would like to eliminate the requirement for these reasonable cyber security measures, they want to collect more and more consumer data and sell it at will, without first seeking the permission of their customers. When laid bare, this legislation would compromise each and every internet users’ privacy, leaving a vacuum in its wake.

Supporting this bill supports making each and every user of the internet more vulnerable and taking a step backwards in cybersecurity at a time when we should be learning from recent lessons and increasing our security postures.

The FCC took a responsible, deliberate and commonsense step to establish broadband privacy protections in October 2016. This bill, if passed, will be an irrevocable step in the wrong direction.

Vote no on this rule and the underlying bill and resolution.

I yield back the balance of my time.