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The net neutrality CRA may be the most tedious piece of political theater ever
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At this point, only the most masochistic and cynical among DC's policy elite actually *desire* for the net neutrality conflict to continue. And yet, despite claims that net neutrality principles are critical to protecting consumers, passage of the current Congressional Review Act ("CRA") [disapproval resolution](#) in Congress would *undermine* consumer protection and promise only to drag out the fight even longer.

The CRA resolution is primarily intended to roll back the FCC's re-re-classification of broadband as a Title I service under the Communications Act in the Restoring Internet Freedom Order ("RIFO"). The CRA allows Congress to vote to repeal rules recently adopted by federal agencies; upon a successful CRA vote, the rules are rescinded and the agency is prohibited from adopting substantially similar rules in the future.

But, as TechFreedom [has noted](#), it's not completely clear that a CRA on a regulatory classification decision will work quite the way Congress intends it and could just trigger more litigation cycles, largely because it is unclear what parts of the RIFO are actually "rules" subject to the CRA. Harold Feld [has written a critique](#) of TechFreedom's position, arguing, in effect, that *of course* the RIFO is a rule; TechFreedom responded with a pretty devastating [rejoinder](#).

But this exchange really demonstrates TechFreedom's central argument: It is sufficiently unclear how or whether the CRA will apply to the various provisions of the RIFO, such that the only things the CRA is guaranteed to do are 1) to strip consumers of certain important protections — it would take away the FCC's transparency requirements for ISPs, and imperil privacy protections currently ensured by the FTC — while 2) prolonging the already interminable litigation and political back-and-forth over net neutrality.

The CRA is political theater

The CRA resolution effort is not about good Internet regulatory policy; rather, it's pure political opportunism ahead of the midterms. Democrats have recognized net neutrality as a good wedge issue because of its low political opportunity cost. The highest-impact costs of over-regulating broadband through classification decisions are hard to see: Rather than bad things happening, the costs arrive in the form of good things *not* happening. Eventually those costs work their way to customers through higher access prices or less service — especially in rural areas most in need of it — but even these effects take time to show up

and, when they do, are difficult to pin on any particular net neutrality decision, including the CRA resolution. Thus, measured in electoral time scales, prolonging net neutrality as a painful political issue — even though actual resolution of the process by legislation would be the sensible course — offers tremendous upside for political challengers and little cost.

The truth is, there is widespread agreement that net neutrality issues need to be [addressed by Congress](#): A constant back and forth between the FCC (and across its own administrations) and the courts runs counter to the interests of consumers, broadband companies, and edge providers alike. Virtually whatever that legislative solution ends up looking like, it would be an improvement over the unstable status quo.

There have been various proposals from Republicans and Democrats — many of which contain provisions that are likely bad ideas — but in the end, a bill passed with bipartisan input should have the virtue of capturing an open public debate on the issue. Legislation won't be perfect, but it will be tremendously better than the advocacy playground that net neutrality has become.

What would the CRA accomplish?

Regardless of what one thinks of the substantive merits of TechFreedom's arguments on the CRA and the arcana of legislative language distinguishing between agency "rules" and "orders," if the CRA resolution is successful (a prospect that is a bit more likely following the Senate vote to pass it) what follows is pretty clear.

The only certain result of the CRA resolution becoming law would be to void the transparency provisions that the FCC introduced in the RIFO — the one part of the Order that is pretty clearly a "rule" subject to CRA review — and it would disable the FCC from offering another transparency rule in its place. Everything else is going to end up — *surprise!*— before the courts, which would serve only to keep the issues surrounding net neutrality unsettled for another several years. (A cynic might [suggest](#) that this is, in fact, the goal of net neutrality proponents, for whom net neutrality has been and continues to have important political valence.)

And if the CRA resolution withstands the inevitable legal challenge to its rescision of the *rest* of the RIFO, it would also (once again) remove broadband privacy from the FTC's purview, placing it back into the FCC's lap — which is already prohibited from adopting privacy rules following last year's successful CRA resolution undoing the Wheeler FCC's broadband privacy regulations. The result is that we could be left without *any* broadband privacy regulator at all — presumably *not* the outcome strong net neutrality proponents want — but they persevere nonetheless.

Moreover, TechFreedom's argument that the CRA may not apply to all parts of the RIFO could have a major effect on whether or not Congress is even accomplishing anything at all (other than scoring political points) with this vote. It could be the case that the CRA applies

only to “rules” and not “orders,” or it could be the case that even if the CRA does apply to the RIFO, its passage would not force the FCC to *revive* the abrogated 2015 Open Internet Order, as proponents of the CRA vote hope.

Whatever one thinks of these arguments, however, they are based on a sound reading of the law and present substantial enough questions to sustain lengthy court challenges. Thus, far from a CRA vote actually putting to rest the net neutrality issue, it is likely to spawn litigation that will drag out the classification uncertainty question for at least another year (and probably more, with appeals).

Stop playing net neutrality games — they aren't fun

Congress needs to stop trying to score easy political points on this issue while avoiding the hard and divisive work of reaching a compromise on *actual* net neutrality legislation. Despite how the CRA is presented in the popular media, a CRA vote is the furthest thing from a simple vote *for* net neutrality: It's a political calculation to *avoid* accountability.

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