Two Updates in Fight Over Internet Neutrality

by Andrew McDiarmid [1]
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As expected following two hearings [2] on the subject, the House voted on Friday to repeal [3] the FCC's Open Internet rules. Under a rarely applied provision of the Congressional Review Act [4], Congress has the power to pass a Joint Resolution formally disapproving of rules published by a Federal agency and nullifying their effect. This resolution, though, will not likely amount to more than a symbolic gesture. The House's version, passed largely along party lines, now moves to the Senate, where despite 40 co-sponsors it is not expected to pass, and the Obama Administration has threatened to veto it [5].

Regardless of the resolution's prospects, repealing the rules would be a mistake. The balanced rules are necessary to preserve the Internet as an open, competitive platform for free expression and commerce. They focus narrowly on the data-transmission component of broadband Internet access, and do not amount, despite their opponents' insistence, to "regulating the Internet." If the CRA resolution were to succeed, any substantially similar future rules would be barred as well, leaving the nation's communications regulator with no authority over Internet access providers, an absurd result as we've said many times before. With the long-awaited House vote behind us, we will work to defend the rules and prevent passage of a similar resolution in the Senate.

Congressional repeal is not the only threat the rules face. The real test for the rules will come in court, although that too will have to wait. Earlier last week, the DC Circuit Court of Appeals threw out [6] Verizon's challenge to the rules. The rules have yet to be published in the Federal Register, and the court therefore ruled that Verizon had jumped the gun on filing its appeal. (The court rejected Verizon's claim that it could challenge the rules as a change to its wireless spectrum license.) We can rest assured though, that the challenge will reappear as soon as the rules are formally published, and the next battle for Internet neutrality will begin.

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