



The Daily Dish

# The Upcoming Net Neutrality Show Trial

DOUGLAS HOLTZ-EAKIN | APRIL 24, 2018

## *Eakinomics: The Upcoming Net Neutrality Show Trial*

Get ready for a show trial on [network neutrality](#) using the Congressional Review Act (CRA). Network neutrality, recall, is the benign-sounding Obama-era Federal Communications Commission (FCC) regulation that imposed 1930s-style monopoly telephone regulation onto the vibrant Internet ecosystem. In December, the FCC rolled back the network neutrality rule and returned regulation of the Internet to the Federal Trade Commission. Unfortunately, despite its horrific policy underpinnings, “network neutrality” just sounds too good to oppose; it’s like being against puppies, kittens, and sunshine.

The CRA ([5 U.S.C. 801](#)), meanwhile is a 1996 law that allows Congress to pass a joint resolution of disapproval voiding federal regulations. Most significantly, it provides fast-track procedures to do so. Debate is limited to ten hours and may not be filibustered. In addition, points of order against the resolution are waived; it is not subject to amendment, or a motion to reconsider or postpone. Senate Democrats intend to introduce a CRA resolution by mid-June to reverse the FCC’s December decision, and if the resolution garners a single Republican vote it would pass. That outcome is intended to be a huge embarrassment to the FCC, and it would kick the resolution over to the floor of the House. The whole process will be dramatic.

But even if the resolution gets past the Senate and House and then succeeds in getting the president’s signature, it will not return the Obama-era rules. As AAF’s Will Rinehart [notes](#) “The CRA gives Congress the ability to disapprove a rule, which is defined in Title 5 of U.S Federal Code [Subsection 551](#).” And here’s the key point: there is a distinction between a “rule,” and an “order” supported by an adjudication. The key action taken by the FCC in December 2017, the Restoring Internet Freedom Order, was to reclassify Internet service, which might be considered an adjudicatory order. That means the CRA may not be able to reverse it.

These legal issues may never matter, as the CRA likely dies somewhere along the way. But they add to the evidence that the upcoming vote is a political event.