

The PRESIDING OFFICER. The question is on agreeing to the motion. The motion was agreed to.

**PROVIDING FOR CONGRESSIONAL DISAPPROVAL OF A RULE SUBMITTED BY THE FEDERAL COMMUNICATIONS COMMISSION—MOTION TO PROCEED**

Mr. MCCONNELL. Mr. President, I move to proceed to S.J. Res. 34.

The PRESIDING OFFICER. The clerk will report the motion.

The senior assistant legislative clerk read as follows:

Motion to proceed to Calendar No. 16, S.J. Res. 34, a joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Federal Communications Commission relating to "Protecting the Privacy of Customers of Broadband and Other Telecommunications Services."

The PRESIDING OFFICER. The question is on agreeing to the motion. The motion was agreed to.

**PROVIDING FOR CONGRESSIONAL DISAPPROVAL OF A RULE SUBMITTED BY THE FEDERAL COMMUNICATIONS COMMISSION**

The PRESIDING OFFICER. The clerk will report the joint resolution.

The senior assistant legislative clerk read as follows:

A joint resolution (S.J. Res. 34) providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Federal Communications Commission relating to "Protecting the Privacy of Customers of Broadband and Other Telecommunications Services."

The PRESIDING OFFICER. The Senator from Arizona.

Mr. FLAKE. Mr. President, I rise in support of my resolution of disapproval under the Congressional Review Act of the FCC's broadband privacy restrictions. As chairman of the Senate Judiciary Committee's Privacy Subcommittee, I have spent more than a year closely examining this issue.

In February of 2015 the FCC, under then-Chairman Tom Wheeler, took the unprecedented step of reclassifying broadband providers as "common carriers" under title II of the Communications Act. In other words, on a 3-to-2 party-line vote, the FCC decided that internet service providers should be treated like telephone companies for regulatory purposes. The decision encroached on the Federal Trade Commission's jurisdiction to regulate ISP privacy policies, stripping these companies of their traditional privacy regulator.

Recognizing that his actions to impose net neutrality on ISPs created regulatory uncertainty, last spring Chairman Wheeler began to float the idea of implementing new FCC privacy rules. The FCC decided, again on a 3-to-2 party-line vote, to move forward with the rule change just before election day. The whole process was unsettling, to say the least.

The FCC ultimately decided to commandeer an area of regulatory authority for itself, without any meaningful check on this unilateral action. Once it initiated the bureaucratic power grab, it proceeded to establish new rules restricting the free speech of its regulatory target.

I submitted comments to the agency expressing my constitutional concerns about its proposed rule. I wasn't alone in doing so. Noted Harvard law professor Larry Tribe, hardly one to be confused for a conservative, did the same. But the rules were finalized nonetheless.

While the FCC recently took a step in the right direction by staying the application of the privacy rules, these midnight regulations are still hanging out there. Congress needs to repeal these privacy restrictions in order to restore balance to the internet ecosystem and provide certainty to consumers.

These regulations have altered the basic nature of privacy protection in the United States. For decades, the FTC policed privacy based on consumer expectations for their data, not bureaucratic preferences. These consumer expectations were just common sense: Sensitive data deserves more protection than nonsensitive data.

Unfortunately, the FCC rules dispensed with this commonsense regulatory approach. Under the new rules, what matters isn't what the data is but, rather, who uses it. This creates a dual-track regulatory environment where some consumer data is regulated one way if a company is using it under the FCC's jurisdiction and an entirely different way if its use falls under the FTC, or the Federal Trade Commission.

This is all confusing enough, but it gets worse. In the consumer technology sector, innovation is the name of the game. Companies are constantly rolling out new products and competing to win over consumers. By the same token, consumers are always on the lookout for the newest gadget or app. But the FCC's privacy order makes it increasingly difficult for consumers to learn about the latest product offerings from broadband providers. Instead of being notified about faster and more affordable alternatives for their family's home internet needs, under the FCC's privacy order, Arizonans might get left in the dark.

The FCC's heavyhanded data requirements restrict the ability of broadband providers to offer services tailored to their customers' needs and interests, and they lead to inconsistent treatment of otherwise identical data online. When a regulation diminishes innovation, harms consumer choice, and is just all-around confusing, it is a bad regulation. The FCC's privacy rule for ISPs is a bad regulation.

When it chose to impose needlessly onerous privacy regulations on broadband providers while leaving the rest of the internet under the successful FTC regime, the FCC unfairly

picked one politically favored industry—the edge providers—to prevail over a different industry—broadband.

Repealing the FCC's privacy action is a crucial step toward restoring a single, uniform set of privacy rules for the internet. The FTC's privacy rules are the result of an ongoing, data-driven effort to understand and protect consumer expectations. That is the FTC. The FCC's rules, on the other hand, are the hasty byproduct of political interest groups and reflect the narrow preferences of well-connected insiders.

To sum all of this up, the FCC's midnight privacy rules are confusing and counterproductive. This CRA will get rid of it, pure and simple. But let me say what it won't do. Despite claims to the contrary, using this CRA will not leave consumers unprotected. That is because the FCC is already obligated to police the privacy practices of broadband providers under section 222 of the Communications Act, as well as various other Federal and State laws.

Both Chairman Wheeler and Chairman Pai agree on that point. Just last week, Chairman Pai wrote to my friends on the other side of the aisle confirming this legal fact.

This resolution will not disrupt the FCC's power, nor will it infringe on the FTC's jurisdiction elsewhere. Neither will it affect how broadband providers currently handle consumer data. Broadband providers are currently regulated under section 222, and they will continue to be after these midnight regulations are rescinded.

Passing this CRA will send a powerful message that Federal agencies can't unilaterally restrict constitutional rights and expect to get away with it. I urge my colleagues to support this resolution of disapproval.

I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from Florida.

Mr. NELSON. Mr. President, we are talking about taking privacy rights away from individuals if we suddenly eliminate this rule. Do you want a large company that is an internet provider, that has all the personal, sensitive information because of what you have been doing on the internet—do you want that company to be able to use that for commercial purposes without your consent? That is the issue.

If you want to protect people's privacy, I would think you would want to require that an individual who has paid money for the internet provider to provide them with the internet—you go on the internet, and you go to whatever site you want. You do business. You do personal business. You do banking. You go on the internet and you buy things. You talk about your children's school, about when you are going to pick up your children, maybe what your children want to wear to school. You want to talk on the internet about anything that is personal. Do you want that internet provider to have access to