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Associated Press

When U.S. President Donald Trump's critics have demanded to know what his supporters got in exchange for voting for the genital-grabber-in-chief, thus far those supporters have had only one concrete achievement they could really point to: the appointment of Neil Gorsuch to the Supreme Court. Now it looks like they will have another: the end of the Federal Communications Commission's push into "net neutrality."

A brief history of that effort is in order. Under the Obama administration, the FCC looked to write regulations that would limit the ability of internet service providers to play favorites with certain services on their network. The administration was haunted by the specter of ISPs blocking political content, accepting payments from big content providers like Netflix to prioritize their services (thus making it difficult-to-impossible for upstarts to compete), and otherwise turning the internet into a closed garden rather than the open frontier its architects envisioned.

Unfortunately, the FCC ran into a problem: Courts kept telling the commission that it didn't have the legal authority to force ISPs to keep their networks equally open to all comers. So a couple years ago, the FCC moved to reclassify ISPs as "common carriers" under Title II of the Communications Act of 1934. That offered much more scope for regulation, and finally allowed the FCC to realize the dreams of internet activists everywhere.

Too much scope for regulation, said critics — including Ajit Pai, then a commissioner, and now the chairman of the FCC. Pai wrote a blistering dissent to the FCC's decision, summing

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up the major problem with the FCC's move: It forced ISPs into an 80-year-old framework designed for the telephone monopolies of a much different era. Those regulations were more concerned about things like controlling market power than, say, promoting innovation. And while the advocates for net neutrality stressed the benefits for competition among content providers, the critics asked what would happen to competition among ISPs, since heavy-handed regulation often acts as a barrier to entry for new startups, which can't afford to negotiate the regulatory apparatus.

Those of us old enough to remember the telephone service looked like in the 1970s, before the FCC unwound a little — which is to say, pretty much like the service our parents had when they were children, down to the astronomical prices for long-distance calls, and the chunky plastic rotary telephones — can see why critics were concerned about giving the FCC that kind of power to block innovation. No problem, retorted advocates: The FCC just won't use much of its regulatory power. The technical term is "forbearance," and the FCC offered to do a lot of it when it brought ISPs under Title II, for example by forgoing its statutory authority to set rates.

But offering not to use the power is not the same thing as not having it. A future commission might change its mind, and in the meantime ISPs would have to plan their investments accordingly — knowing that the revenue they'd counted on to make some new project pay off might vanish at the stroke of a commissioner's pen. That kind of regulatory uncertainty does not generally foster innovation, or for that matter, sound business decisions.

Unsurprising, then, that under Pai, the commission quickly announced a proposal to roll back the Obama-era innovations. A contentious public comment period followed, but this week, the FCC announced the final word: Tier II regulation of ISPs is going away, and the net neutrality rules with it.

The internet will be filled today with denunciations of this move, threats of a dark future in which our access to content will be controlled by a few powerful companies. And sure, that may happen. But in fact, it may already have happened, led not by ISPs, but by the very companies that were fighting so hard for net neutrality.

Consider what happened to the Daily Stormer, the neo-Nazi publication, after Charlottesville. One by one, hosting companies refused to permit its content on their servers. The group was forced to effectively flee the country, and then other countries, too, shut it down.

Now of course, these are not nice people. Their website espoused vile hate. But the fact remains that what they were publishing was not illegal, merely immoral, and their immoral speech was effectively shut down by a small number of private companies who decided to exercise their considerable control over what we're allowed to read. And what is to stop them from expanding this decision to other categories, forcing the rest of us to conform to Silicon Valley's idea of what it is moral and right for us to see?

Fifteen years ago, when I started blogging, it was common to hear that "the internet interprets censorship as damage and routes around it." You don't hear that so often anymore, because it's not true. China has proven very effective at censoring the internet, and as market power has consolidated in the tech industry, so have private firms.

Meanwhile, our experience of the internet is increasingly controlled by a handful of firms, most especially Google and Facebook. The argument for regulating these companies as public utilities is arguably at least as strong as the argument for thus regulating ISPs, and very possibly much stronger; while cable monopolies may have local dominance, none of them has the ability that Google and Facebook have to unilaterally shape what Americans see, hear and read.

In other words, we already live in the walled garden that activists worry about, and the walls are getting higher every day. Is this a problem? I think it is. But that doesn't mean that the internet would get better if Google and Facebook and Apple and Amazon were required to make every decision with a regulator hanging over their shoulder to decide whether it was sufficiently "neutral."

The fact that these firms were able to cement their power at the moment when regulators were most focused on keeping the internet open tells you just how difficult it is to get that sort of regulation right; while you are looking hard at one danger, an equally large one may be creeping up just outside the range of your peripheral vision. Indeed, you may be making one problem bigger while trying to solve another. We may indeed be facing a future of less choice and less consumer power. But this decision is unlikely to be what brings us there. - **Bloomberg (opinion)**



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