

Commentary: Say goodbye to the Internet we've known

January 17 2014, by Troy Wolverton

If you like how cable television works, you're going to love how a [court decision this week could change the Internet](#).

Thanks to the ruling, [broadband providers](#) can now exert a lot more control over what sites you visit on the Internet and what services you can access. The decision would allow Comcast, for example, to bar its Internet subscribers from seeing videos from Netflix or from using Vonage's Internet phone service.

Made by the U.S. Court of Appeals for the D.C. Circuit, the decision Tuesday overturned rules put in place by the Federal Communications Commission in 2010 that barred wired Internet providers from blocking access to particular sites or services, and generally required them to treat all Internet traffic equally.

While the court's ruling will worry and anger advocates of an open Internet, it's federal regulators, not the judges, who are to blame. Their subservience to the big telecommunications companies and timidity in writing the rules governing Internet traffic led directly to the court's decision.

One thing that has made the Internet distinct from pay television services is the role of the service provider. With pay TV, the cable or satellite company determines what channels you can watch, which often depends on what kind of financial deals the providers can strike with the channel operators. As subscribers have seen, disputes over who should pay what

can lead to channels or programs going off the air.

Since its founding, the Internet has operated differently, at least in this country. The understanding - underwritten by certain legal precedents - was that end users should be able to connect to any site or service attached to the network, not just those that their [broadband service provider](#) approves. There's also long been a generally understood principle that all Internet providers should treat the bits that pass through their networks more or less the same; that you should be able to access video from Netflix as easily as video from Comcast - or even video on your Aunt Edna's website.

But in recent years, this principle, dubbed Net neutrality, has been challenged by the service providers. Most notoriously, Comcast inhibited some of its customers from using file-sharing applications by deliberately slowing access to those services.

In response to those challenges, the FCC, which regulates telecommunications services in this country, put in place its Open Internet rules, which sought to explicitly codify the principles of Net neutrality.

But the FCC made what turns out to have been a big mistake. As the appeals court noted in its ruling, the Open Internet rules essentially require the broadband providers to act as "common carriers," a class of highly regulated companies that are required to treat all customers the same. Unfortunately, the FCC determined long ago that the providers weren't common carriers.

Under the Bush administration, the FCC was determined to deregulate the telecommunications industry. As part of that effort, it reversed its previous stance and removed Internet providers from common carrier regulations. But even as it deregulated the industry, the FCC sought to

maintain the notion of Net neutrality. Unfortunately, by determining that the broadband providers weren't common carriers, it basically took away from itself the legal authority to enforce that notion. That's what the court ruled Tuesday: that the FCC can't impose common carrier rules on companies that aren't common carriers.

There are, of course, answers to this problem. One is that the U.S. Supreme Court could overrule the appeals court if the FCC appeals the ruling. The other is that the FCC could reclassify the broadband providers and give itself back the authority to regulate them.

But you can bet it will face a lot of resistance to doing so. Back when the agency was debating the Open Internet rules, consumer groups urged the FCC to ground those rules in the finding that the broadband providers are in fact common carriers. But that proposal met considerable resistance from the big telecommunications companies and from those companies' champions in Congress. The final rules were an attempt by the agency to appease both sides.

The agency may find the gumption this time to tick off the telecommunications giants by re-regulating them. But I wouldn't bet on it. I think it's much more likely that the agency, which is now headed by a former industry lobbyist, will capitulate.

So enjoy accessing your Internet videos from Netflix and Aunt Edna. They may not be so easy to watch in the future - if you can watch them at all.

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