

Net neutrality should be Silicon Valley's next fight

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Credit: Wikipedia

Silicon Valley is rightly focused on President Donald Trump's immigration order. But it should be gearing up for another fight that's vital to both tech companies and their customers.

Net neutrality is in the crosshairs again. Ajit Pai, the new chairman of the Federal Communications Commission, has made it clear that he's no fan. He's already halted a net neutrality-related investigation launched by his predecessor and recently reaffirmed his belief that, one way or another, the "days are numbered" for the Open Internet rules.

Pai was not available for comment, but advocates on both sides of the net neutrality debate believe it's only a matter of time before he tries to undo the rules.

If the courts or Congress don't overturn them, Pai will, said Berin Szoka, president of Tech Freedom, a group that advocates against regulations affecting the technology and telecom industries, at a forum in Menlo Park, Calif., on net neutrality last week.

"It's no mystery what Ajit is going do," he said.

How exactly Pai will go after the rules is an open question, said Craig Aaron, CEO of Free Press, a consumer advocacy group that lobbied for them.

But he added, "I think he's making it pretty clear that he's not interested in enforcing them and that he would welcome pretty much any opportunity to undermine or defang them."

The net neutrality rules say that internet service providers shouldn't unreasonably discriminate against particular internet sites or services. That has been spelled out in three big prohibitions: broadband providers are barred from blocking, throttling or prioritizing for a fee access to particular sites and services. Under the rules, providers are also required to disclose how they manage their networks.

The threat that those rules might be overturned should be of utmost concern to Silicon Valley and the broader [tech industry](#). Tech companies including Google, Facebook, Netflix and Apple have thrived in an environment ruled by the principles of net neutrality, where they don't have to worry about whether they'll be able to reach their customers over the internet or whether broadband providers might slow down access to their sites, services or apps.

Without the net neutrality protections, larger companies likely will be forced to pay broadband providers to guarantee their customers will be able to access their sites and services. Not only could those fees be significant, they almost certainly will be passed along to consumers in the form of higher

costs. Meanwhile, smaller companies could easily lose out by being unable to afford to pay such premiums. That could have obvious effects on competition and innovation.

"There are lot of companies that benefit from having well-repaired roads," said John Bergmayer, a senior staff attorney at Public Knowledge, a consumer advocacy group that long pressed for strong net neutrality rules. Similarly, he added, broadband access "is such basic infrastructure. Everyone needs it."

Right now, though, Silicon Valley doesn't seem particularly engaged on this issue, at least not publicly. The immigration fight is gobbling up a lot of attention. Many in the tech industry, particularly the big companies, have been hopeful that the Trump administration will push forward on a tax reform that would slash or eliminate the taxes they owe on their overseas profits. And like many Americans, many seem to be trying to get their bearings amid all the rapid changes.

"I think a lot of them are stumbling a little bit," Aaron said. Like many people inside and outside Washington, they're trying to figure out "what it means to operate in the Trump administration."

But Pai isn't sitting still. Earlier this month, in one of his first actions as chairman, he shut down an inquiry his predecessor had launched into so-called zero-rating plans. Under those plans, [broadband providers](#) allow consumers to access particular sites and services without using any of their limited buckets of data bandwidth.

Consumer advocates have charged that such plans can violate the principles of net neutrality, because they can distort the market by allowing providers to give preferential treatment to their own sites and services or those of paid partners. The FCC under Tom Wheeler, Pai's predecessor, found reason to believe that two such plans, one each from AT&T and Verizon, did fall afoul of the Open Internet rules. Instead of pursuing the investigation, which was launched toward the end of Wheeler's tenure, Pai gave a green light to AT&T and Verizon to continue their plans and to other providers to create their own.

Other actions could be coming up. Last year, a federal appeals court panel upheld the Open Internet rules. But opponents of the rules are seeking to have the entire court rehear the case and will likely appeal to the Supreme Court if it doesn't. Under Pai, the FCC could choose to stop defending the rules.

Some congressional Republicans have been seeking to overturn the net neutrality rules and to strip the FCC of much of its authority. Pai could press them to go forward. Or he could simply launch a new rulemaking effort in the FCC itself to overturn the rules.

Those rules were the result of years worth of lobbying by advocates, companies and individual citizens. All three are going to be needed to defend them now that they are in place. Silicon Valley companies in particular could play an important role through public advocacy, private lobbying and the funding of opposition efforts.

Advocates think internet users - who flooded the FCC with comments in support of [net neutrality](#) - played the key part in getting the rules in place and will play a crucial role in defending them. But they are hopeful the tech industry will have their backs.

The [tech companies](#) "have a responsibility, in my opinion, to not only stand up for their users, in terms of their policy positions, but to fight for them," said Evan Greer, a campaign director at Fight for the Future, a [consumer advocacy group](#) that focuses on internet issues.

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