



September 13, 2006

The Honorable Ted Stevens
Chairman
Senate Commerce Committee
254 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Daniel K. Inouye
Co-chairman
Senate Commerce Committee
254 Russell Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairmen:

We write on behalf of America's colleges and universities to set forth our views on H.R. 5252 as passed by the Senate Commerce Committee in June. We appreciate the difficult task you face in trying to craft comprehensive telecommunications legislation that can be enacted into law this year. We believe the effort to update the telecommunications laws for the 21st century is extremely important, and we applaud your efforts to do so.

Unfortunately, the bill does not yet meet the needs of higher education. While the municipal broadband section is helpful, our concerns with the net neutrality provisions of the bill are so fundamental that we cannot lend our support to the bill as it passed the Committee. Net neutrality is extremely important for colleges and universities as we develop new ways to deliver multimedia instructional materials to students, including students off campus and in rural areas. Universities have long been drivers of Internet innovation. Our research laboratories are now developing next-generation Internet technologies that will drive the Internet economy of the future; these technologies will require an open and accessible Internet to develop and flourish.

On June 19, 2006, a number of us wrote to you identifying four principal concerns with the "staff draft" that was released the day before. The reported bill does not rectify any of those four concerns. To re-iterate, our principal concerns with the reported bill are as follows:

1. While the draft properly recognizes the consumer's right to "go anywhere" on the Internet, these "rights" are limited to the retail, end user (see definition of "subscriber" in section 913). Providers of web sites or services (such as VoIP providers or university lecturers) are not assured of access to the Internet and are not permitted to file a complaint. These rights are only provided to "subscribers." Guaranteeing the right of consumers to visit any web site they wish is of little meaning if the providers of web sites, such as colleges and universities, are not provided similar access rights to the Internet (i.e., the consumer can "go anywhere", but there is nowhere to go.)

2. The obligation is only on the ISP (public Internet Service Provider). There does not appear to be any obligation on the underlying carrier providing the transmission facilities to carry every content and equipment provider. Requiring the ISP to carry all traffic to keep the Internet open is inadequate if the network operator discriminates before the traffic ever reaches the ISP.
3. The bill does not prohibit anticompetitive discrimination against customers or information providers in ways that distort the market. While the Internet service provider (ISP) must give access to everybody, the bill allows the ISP to provide higher quality access to some content providers over others in a discriminatory manner, that is, in a way that does not provide all players the same opportunities to take advantage of the full range of services. In other words, the bill does not prohibit “tiering” or the imposition of “toll booths” on the Internet that are used in a discriminatory way to favor certain customers and information providers over others. Higher education does not demand *equal* treatment of every Internet bit. As operators of networks, we appreciate that some categories of traffic could be treated differently than other categories of traffic to manage the network properly and to provide differentiated services. These services must, however, be offered to all customers and providers on a fair basis. Allowing the ISP to manipulate traffic in a discriminatory manner would violate the fundamental principle of neutrality that has guided the design and construction of the Internet from its inception.
4. Section 903(b)(4) permits subscribers to exercise their rights “subject to the limitations of the Internet service such subscriber has purchased.” This overly broad language could undermine the few consumer protections that exist in the bill. It is very easy for an ISP to bury service limitations in the fine print of the subscriber’s service contract that allows the ISP to block or impede traffic or give favorable treatment to certain web sites without violating the legislation. We certainly understand that some broadband providers or ISPs may have capacity limitations that require the provider to limit the quantity or type of traffic that is sent or delivered. This provision as drafted, however, is not restricted to capacity constraints.

The above four points are our principal concerns. In addition, we note that the bill permits ISPs to protect the “integrity” of the network. We are concerned that an ISP could use this (undefined) word as an excuse to discriminate against certain content providers. The meaning of this word is particularly troublesome because the language in the bill already allows the ISP to protect the “security” and “privacy” of the network.

Mr. Chairmen, each of these concerns could be addressed by slightly altering the wording of the provisions in this bill. We would be happy to work with you to achieve these changes so that the needs of the higher education for an open and accessible Internet can be maintained.

Sincerely,

Mark Luker, Vice President
EDUCAUSE

Gary Bachula, Vice President
Internet2

On behalf of:

American Association of Collegiate Registrars and Admissions Officers
American Association of Community Colleges
American Association of State Colleges and Universities
American Council on Education
American Indian Higher Education Consortium
Association of American Universities
Association of Community College Trustees
Association of Jesuit Colleges and Universities
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