



June 19, 2006

The Honorable Ted Stevens
Committee on Commerce, Science and
and
Transportation
254 Russell Senate Office Building
Washington, DC 20515

The Honorable Daniel Inouye
Committee on Commerce, Science
Transportation
508 Dirksen Senate Office Building
Washington, DC 20515

Dear Chairman Stevens and Ranking Member Inouye:

We write on behalf of EDUCAUSE and Internet2 to express our opposition to net neutrality language in the latest “staff draft” legislation, released today. While we are heartened by the non-binding findings that recognize the importance to competition and democracy of an open Internet, we are dismayed that the draft bill does not provide meaningful enforcement of those findings. Unfortunately, the language that is included in the draft will not preserve the free flow of information over the Internet or enhance investment in Internet-based technologies. For example, the language does not preserve the non-discrimination principle necessary to insure the delivery of distance learning and telemedicine applications and the low barrier to entry for new and innovative applications and services developed on our campuses.

Among the problems we see with the language are the following:

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. Wholesale providers of the web sites or services (such as VOIP providers) are not protected. 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 rights of access to the Internet. (i.e. the consumer can “go anywhere”, but there is nowhere to go.)
2. The obligations are placed on the Internet Service Provider (ISP), not on the underlying transmission provider. Our view is that it is the operator of the underlying transmission (the network owner or operator) that has the greatest incentive to discriminate because there is little competition for transmission capacity to the end user. Requiring the ISP to carry all traffic to keep the Internet open is of little value if the network operator discriminates before the traffic ever reaches the ISP.

3. The language does not prohibit discrimination. The language still allows the network owner or ISP to offer a lower quality transmission to some providers, web sites or services and higher quality, higher priced transmission to a select group of other providers. In other words, there is no ban on tiering within the Internet. The network operators (and ISPs, for that matter) can still create fast and slow lanes, thereby relegating financially-strapped universities to the slow lane.

4. Under Section 903(b)(4) of the draft bill, an ISP only has to keep the Internet open “subject to the limitations of the Internet service such subscriber has purchased.” This language would allow the network owner or ISP to bury discriminatory restrictions in its subscriber agreement. This is a huge loophole and severely undermines all the consumer “rights” listed above it.

As we have stated previously, net neutrality is extremely important for colleges and universities as they develop new ways to deliver multimedia instructional materials to students, including students off campus and in rural areas. University research laboratories are developing next-generation Internet technologies that will drive the Internet economy; these technologies will require an open and accessible Internet to develop and flourish.

We support the Snowe-Dorgan legislation (S. 2917) and ask for it to be included in the bill when it is brought before the Committee for a vote. If that is not achievable, we stand ready to work with you on alternate language. In any language that is brought before the Committee, we ask that you recognize the interests of universities in preserving an open, non-discriminatory Internet that serves as an essential medium for education, healthcare and innovation.

Thank you for your consideration of our views.

Sincerely,

Mark Luker, Vice President
EDUCAUSE

Sincerely,

Gary Bachula, Vice President
Internet2

cc: Members of Committee on Commerce, Science and Transportation

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