

Envisioning the IT Policy Agenda

August in the U.S. capital is typically quiet. Congress is in recess, and most bureaucrats choose this hot steamy month for their vacation. In a normal year, serious legislation is put off until September; in a close election year such as this one, it is put off until “after the elections.” This year, with the exception of agency appropriations and the 9/11 Commission Report, Congress and federal agency decision-makers are in a holding pattern. However, higher education IT issues that will be prominent when the 109th Congress convenes in January are already apparent. These include CALEA, the Telecommunications Act, and copyright law.

CALEA Compliance

Deciding whether the Communications Assistance for Law Enforcement Act (CALEA) applies to the Internet is on the Federal Communications Commission (FCC) priority list. In August, the FCC issued a Notice of Public Rulemaking (NPRM) that calls for three months of public comment before any final decision is made. Congress is also considering the question of CALEA compliance for Internet Service Providers (ISPs) as part of the larger issue of Internet regulation.

EDUCAUSE, together with association partners, raised concerns over extending CALEA compliance to ISPs when it submitted comments to the FCC in April.¹ Compliance requirements would have negative effects on innovation and on costs of operation. Innovation would be seriously hampered if ISPs were required to seek federal approval before upgrading their infrastructure, and the

costs to bring present systems into compliance would be prohibitive. Commercial entities can pass along the costs to their customers with little pushback, but higher education, already under pressure from Congress to curb rising tuition costs, would be forced to pass along the financial burden to students. Overshadowing these concerns is the question of whether the new technical mandates will actually be effective, given the expanding use of end-to-end encryption.

The NPRM looks promising in that it addresses most of these concerns.² However, the higher education community must be diligent and must show good-faith collaboration with law enforcement to prove that campus networks do not pose any special security threats. Higher education can help by identifying long-term challenges and potential technical/policy solutions that balance security and privacy concerns while not imposing an undue financial and technical burden on campus networks. The EDUCAUSE Policy Office (<http://www.educause.edu/policy/>) will work with association partners and member leadership to analyze the 100-plus-page NPRM and to submit thoughtful comments.

The Telecommunications Act

The Senate Commerce Committee has already begun a series of hearings to revisit the Telecommunications Act. This multi-year process is being driven by the uncertain regulatory status of IP-enabled services, particularly Voice-over Internet Protocol (VoIP). Previously confined to the halls of the FCC, this issue promises to dominate the congressional IT agenda next year. FCC Chairman Michael Powell

has been consistent in his desire to keep VoIP as regulation-free as possible by not classifying it as a telecommunications service. States, public utility commissions, and rural telecommunications carriers are his strongest opponents. They fear losing valuable revenues as VoIP gains a foothold in the telecommunications market. Another issue is President George W. Bush's and Senator John Kerry's (D-MA) stated goal of ubiquitous broadband deployment by 2007. As technological innovators, who are also viewed as industry-neutral information brokers, those in higher education have an important role (and obligation) to provide federal policymakers with a vision of how future telecommunications policy can best achieve this ideal.

The EDUCAUSE Net@EDU Broadband Policy Group has already taken the initiative, with its recently released white paper “Broadband America: An Unrealized Vision” (see the New Horizons column in this issue of *EDUCAUSE Review* for more information). The paper puts forth a higher education vision for a national broadband plan and sets the stage for a persistent and well-coordinated effort from the broader higher education community to educate congressional, FCC, and White House staff on the importance of an affordable, ubiquitous high-speed network. As one EDUCAUSE member wryly commented at the Seminars in Academic Computing (SAC) in August 2004: “It took Congress twelve years to write the '96 Telecom Act with no knowledge of technology. How long will it take them this time with the knowledge they think they have?”

After the elections, the debate over the

most effective way of promoting affordable broadband deployment will continue. Both presidential candidates have espoused the need, but neither has provided details on how to realize the vision. Continuing budget shortfalls will make an adequate federal investment in broadband highly unlikely, despite recognition of the economic benefits it yields. Currently, only Senator Hillary Rodham Clinton (D-NY) has any broadband bills pending in Congress, and according to her staff, these bills have no chance of passing.

Grassroots efforts, with an increasing number of local municipalities building their own networks, will be the driver of broadband deployment for the foreseeable future. Higher education institutions can play an important role by participating in such local efforts and by educating their state legislatures. Higher education can encourage broadband champions at the local, state, and federal levels to use their political clout to bring together local governments, higher education institutions, and visionary industry partners to spur broadband demand and deployment.

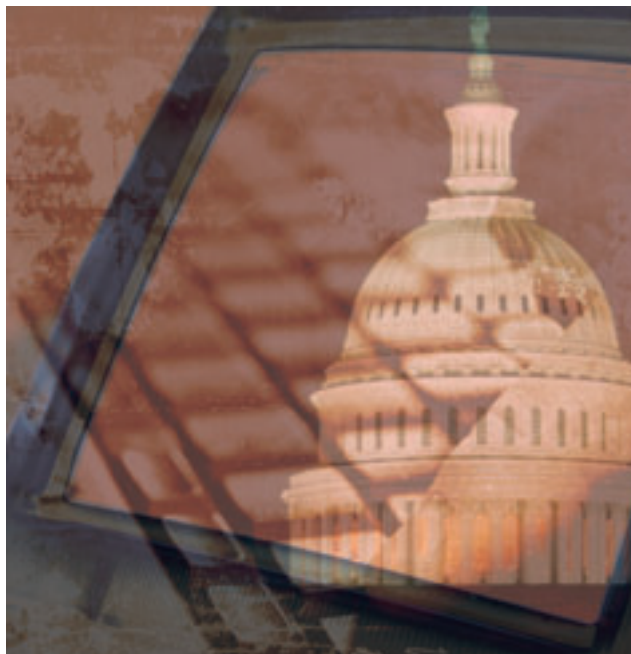
Meanwhile, as the unbundling debate between incumbent and competitive carriers continues at the FCC, the commission's push to facilitate wireless ISPs indicates that the FCC is looking beyond DSL and cable modems. The FCC's recent rulings regarding the 2495-2690 MHz band and the maintenance of the Instructional Television Fixed Service (ITFS) eligibility rules should encourage higher education ITFS license holders to develop broadband applications for educational use.

FCC Chairman Powell is a champion of new technologies, most recently Broadband over Power Lines (BPL). As the FCC seeks public comment on the technical interference and speed issues of BPL, the higher education community must encourage the federal government to consider such nascent, unproven technologies. Although some EDUCAUSE members believe BPL will have little impact on campus networks, they recognize

its potential for reaching off-campus distance learners.

Copyright Law

Copyright law, particularly in regard to peer-to-peer networks, will remain on the federal IT agenda. EDUCAUSE and its association partners are very concerned about the increasing push for content control, which affects fair use and which subjects the academic community to indiscriminate licensing fees. EDUCAUSE is publicly supporting the Digital Media Consumers' Rights Act (HR 107), which seeks to update section 1201 of the Digital



Millennium Copyright Act (DMCA) to allow the circumvention of technological protection measures (TPMs) for fair use purposes.

However, Senate Judiciary Chairman Orin Hatch's (R-UT) Inducing Infringement of Copyrights Act (S. 2560), known as the Induce Act, raises serious concerns. This bill has the potential to chill technological innovation and shut down peer-to-peer networks by holding "whoever intentionally induces any violation" of copyright law legally liable for those violations. In addition, the Register of Copyrights recently recommended that Congress update the Supreme Court's *Sony Betamax* decision, which provides protection from copyright liability for companies that sell equipment used primarily for legitimate uses. Technology hardware companies believe this liability

would severely hamper their ability to introduce new products.

Given the split decisions emanating from the courts concerning the liability of peer-to-peer networks, Senator Hatch and other members of Congress are being pressured by the Recording Industry Association of America (RIAA) and other entertainment interests to craft legislation. Higher education must continue to weigh in on this debate by highlighting the educational and research value of peer-to-peer networks and the harm that such legislation could cause to technological innovation.

Conclusion

As Washington, D.C., looks ahead to the cooler days of fall and the political changes to come with the 109th Congress, the higher education community needs to prepare for the larger role that it will play in federal technology policy. First, the federal government is under increasing pressure to deal with IT policy issues. Higher education must discourage a "quick fix" approach and must take every opportunity to reinforce Commissioner Powell's mantra: "First, do no harm." Second, EDUCAUSE and its association partners need help in educating policymakers at all levels of government on the

best way to address the technical challenges facing law enforcement, the value of powerful and accessible broadband networks, and the continued need for fair use in the digital realm. Finally, higher education must lead by example—by building and developing innovative IT and network solutions, partnering with industry (when appropriate), and always keeping federal, state, and local policymakers abreast of the community's progress.

Notes

1. To review the comments, see <<http://www.educause.edu/ir/library/pdf/NET0404.pdf>>.
2. See Cybertelecom.Org for detailed information on the CALEA NPRM: <<http://www.cybertelecom.org/voip/Fcc.htm#04-295>>.

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