

New Life for Network Neutrality

Last year, the Telecommunications Act of 1996 was set to undergo a ten-year makeover, a comprehensive update needed to bring U.S. federal telecommunications law into the Internet age. Instead, lawmakers and industry lobbyists stumbled over a heretofore seldom-mentioned principle called *network neutrality*, which proved to be a deal-breaker. What went wrong? Or, what went right?

The story begins with years of technical advances that are now beginning to realize higher education's vision of the "triple play"—that is, a single Internet that can deliver integrated, high-quality (1) voice, (2) video, and (3) data to every user. Such a network can support the full range of multimedia content and communications with all the time-shifting, space-shifting, universal access, customer creativity, and rapid innovation of the Internet, while still reducing costs. This is a big win for higher education, which can use such features to dramatically improve the reach and effectiveness of teaching and learning as well as research and service.

One benefit of the triple play is that it pits telephone and cable providers in competition across all their traditional services. Historical discrepancies in federal regulations for these two industries meant, however, that this battle would be fought in the U.S. Congress as well as in the marketplace. Unfortunately, many lawmakers saw these network owners as the only players that mattered, ignoring the critical contributions made to the Internet economy by content providers, network innovators, and consumers.

What happened? In June 2005 the U.S. Supreme Court ruled, in *FCC v. Brand X*, that cable companies did not have to provide

open or "neutral" access to third parties who sought to use cable-based Internet connections to carry competing services. A month later the Federal Communications Commission (FCC) removed rules that guaranteed net neutrality on telephone-based Internet services. Industry leaders' boasts that content providers would no longer get a "free ride" raised the troubling prospect of a future Internet in which availability of content would be controlled by the network owners and based solely on maximizing profits. This prospect, combined with the fact that over 98 percent of the broadband Internet connections in the United States are provided by the local telephone or cable companies, caused genuine alarm throughout the higher education community.

Similar concern rose quickly among large content providers such as Google, Amazon.com, and eBay, as well as consumer groups, Internet innovators and entrepreneurs, and free-speech advocates (see <<http://www.SaveTheInternet.com>>). But despite this opposition, on June 8, 2006, the House of Representatives passed a telecommunications reform bill (HR 5252) that lacked enforceable provisions for net neutrality.

Vowing to step up their efforts and to stop or amend the bill in the Senate, network neutrality supporters rallied, launching a campaign to educate the public as well as Congress. The new EDUCAUSE Network Policy Council weighed in with principles, papers, letters, and visits to members of Congress and the FCC. EDUCAUSE spread the movement directly to its member CIOs, presidents, and federal relations officers by hosting a new coalition that responded with an effective grassroots campaign. Network neutrality was fought to a tie in the

Senate Commerce Committee, and the bill was never presented for a full vote in the Senate. Short of getting a good net neutrality provision inserted into the bill, stopping the bill was seen as an important save by friends of net neutrality (whew!).

In 2007, higher education again has a chance to win or lose network neutrality. Importantly, net neutrality now has name recognition, more supporters, and a stronger voice. The new Congress is friendlier to the issue, as are the current presidential candidates. Neutrality legislation has been reintroduced by Senators Olympia J. Snowe (R-ME) and Byron L. Dorgan (D-ND). There is a neutrality pledge (although only temporary) in the recent AT&T-Bell South merger conditions. The Federal Trade Commission (FTC) held a workshop to consider related issues and possible enforcement, introducing another set of incentives. However, as before, there are very strong opponents. The telcos and the cable companies remain determined to defeat any attempt at net neutrality legislation. Part of their strategy is to focus on getting "friendly" legislation passed at the state level, reducing the need for a comprehensive bill in Congress.

Higher education has been given a chance to regroup, to be prepared with proposed language and effective support. It is time for what higher education does best: thoughtful, reasoned, principled discussion.

For a collection of papers, letters, and testimony on this topic, see <<http://www.educause.edu/netneutrality>>.

Mark Luker, Vice President of EDUCAUSE, heads the Policy Office in Washington, D.C.