(Slide 1 – cover slide)

Good morning from Washington, D.C. During the last Joint Techs meeting I had the privilege of presenting a session on one of the hot public policy debates here in Washington – net neutrality. Today I would like to give an update on that still-hot debate.

(Slide 2 – What is Net Neutrality)

Net neutrality is the concept of non-discrimination by a public network operator to all legitimate digital traffic – all content and applications, regardless of the origin or destination of the traffic. It is also sometimes called "open access."

Network neutrality means a public last-mile network operator, like Verizon or Comcast, cannot block or degrade a web site or an application (like voice over IP). It means packets cannot be prioritized based on who sends or receives them, that packets cannot be prioritized in order to favor a network owner's or an affiliate's content.

(Slide 3 - Why is net neutrality important)

We feel net neutrality is important to preserve the original end-to-end architecture of the Internet, with a neutral core and intelligence at the edge – in the hands of the user. Such design has stimulated enormous amounts of innovation over the years – innovation, as Tim Berners Lee says, "without permission."

(Slide 4 – Why is net neutrality important to Higher Education?)

So why should higher education care about this? First and foremost, we are producers of content. We want our content to be available to our users, wherever they may be. Most of our users (students, faculty, staff) live off campus, so relying exclusively upon our own networks will not suffice. We need the broadband available in the communities surrounding our campuses to be as open to our content as our own networks. And, of course, our users don't just live in a small contiguous area around our campuses – our universities need to reach users literally around the world.

If the Internet evolves into a two-tiered system where content providers like Google and Yahoo and eBay and Amazon must pay huge sums for high-speed access to AT&T's customers, then our universities' content will be at a disadvantage: it will either be consigned to the "slow lane" of the Internet highway, or we will have to pay AT&T the premium for better delivery of our content. But not just AT&T – we would have to pay EVERY last-mile company to make our content available to their customers. AT&T, Verizon, Comcast, Cox, Time Warner, Adelphia, and on and on. That's the balkanization that will be both technically and financially costly to higher education.

Equally important to our research and education missions, higher education would be at a disadvantage in trying to introduce new technologies into the Internet. Right now, under

net neutrality, we can attach any lawful device, create any new application, tweak any software without asking permission from network operator gatekeepers. That has allowed an amazing amount of innovation in the past twenty years.

(Slide 5 – As Citizens)

And so our support for net neutrality goes beyond our narrow interests to that of our economy and our nation: If new applications, new versions of hardware and software, and new start up businesses have to negotiate with telecommunications operators to get access to these re-engineered networks, innovation will slow, and our economy will suffer.

(Slide 6 – A very brief history lesson)

As early as 16th century England, it was recognized that the owner of a means of transport, or communications network, had the means and the incentive to discriminate against competitors based on their own economic interests. The most famous is probably Standard Oil, where the owners of the oil company bought up the railroads and basically drove other oil companies seeking transport out of business.

So there is strong precedent in law for any service "offer to the public for a fee" that it must be on a non-discriminatory basis – inns, toll roads, telegraph, telephone, railroads, air travel. If you offer it to the public, you need to offer it to all of the public on the same basis,.....particularly when there is not sufficient competition for the consumer to get the service elsewhere.

Non-discrimination is not new to communications law:

- local telephone companies may not discriminate against long distance companies; they must provide access on an equal basis, including their own long distance traffic.
- Cellular telephone service is founded on the obligation of nondiscrimination in interconnection and carriage.
- Direct broadcast satellites were granted nondiscriminatory access to cable operators' programming through the 1992 Cable Consumer Protection Act.
- Telephone companies like Verizon and AT&T who are adding video services to their offerings are also relying upon that 1992 law to give them equal access to cable channels.
- Cable companies are relying upon FCC nondiscrimination rules to assure that their VoIP offerings can interconnect with the telephone system.

The Internet in particular has relied upon nondiscriminatory open access, or "neutrality," in its growth and development: network operators passed digital bits on a neutral basis, regardless of where they came from (e.g., an email from a friend, a web search on Google, a web page from the University of Texas) or where they were going (to you or me or our mothers). Network operators exchanged Internet traffic from one network to

another on a nondiscriminatory basis, also, so that a last mile customer of Verizon could send an email to a last mile customer of Qwest.

The Internet's "net neutrality" came from the common carriage laws that governed the underlying transport facilities, which originally were the nation's telephone lines. Since the transport was governed, the Internet which rode on top of the transport, was protected.

(Slide 7 – And then things got messy)

But as we moved from dial-up Internet to broadband – DSL and cable modem – we found both the technologies and the competitive environment changing. But most importantly, the law changed.

(Slide 8 – Why is this an issue now?)

As I said, historically net neutrality was guaranteed by common carriage laws and regulations that governed our telephone companies. But the Federal Communications Commission, in two decisions – one that covered cable modem broadband and a similar ruling covering DSL – removed those services from Title II common carriage regulation and last summer the U.S. Supreme Court in the Brand X case upheld that FCC classification. So, it's just been since last August that network providers can legally discriminate, block, or degrade any content and there is no legal recourse available.

Before the Brand X case, a small local phone company tried to block a VoIP service, and the FCC in the Madison River case stopped them by a ruling and a hefty fine. Today, lawyers tell us, the VoIP provider would have no recourse....the FCC could do nothing.

In addition, several of the phone companies had net neutrality rules imposed upon them for 18 months when their mergers were approved – and that is still in effect, but the clock is ticking.

So why are we concerned, before any significant action has been taken? Because AT&T (SBC) Chairman Ed Whitacre just weeks after the Brand X case announced his company intended to discriminate, to offer tiered services to content providers. And the CEO's of every other major telecom and cable company have said similar things.

(Slide 9 – What is the status?)

The U.S. House of Representatives passed HR 5252, the "Communications Opportunity Promotion and Enhancement Act of 2006" on June 8. An amendment to strengthen net neutrality provisions was offered by Rep. Markey, but it was defeated by a vote 152-269. The bill that passed the House references four FCC "principles," but does not provide any kind of definition of these vague concepts, nor does it provide meaningful enforcement mechanisms.

(Slide 10 – What is the status?)

In the Senate, the issue is still pending, and it is getting hot. The Senate Commerce Committee marked up and passed its version of the telecom bill on June 22. An amendment was offered in committee by Senators Snowe of Maine and Dorgan of North Dakota that would add tough net neutrality language. That amendment failed – but it failed by a tie vote of 11-11.

Senator Stevens, the Chairman of the Committee, has said he needs to identify 60 votes for his bill before the leadership will allow the bill to come to the floor of the Senate. Telecom lobbyists are working overtime to get those votes.

(Slide 11 – Why aren't we winning?)

And that is the crux of our problem. Telephone and cable companies are estimated to be spending $60-$100 million on lobbying and advertising alone on this issue net neutrality. There are full-page ads daily in Capitol Hill newspapers. Local television stations run anti-net neutrality TV ads almost daily. Most Senator's offices tell us they get daily visits from telecom lobbyists.

(Slide 12 – TV Freedom)

Let me give you a little flavor of some of the advertising going on right now. It all started innocently enough – telephone companies arguing that the pending legislation would allow them to compete for cable TV customers and therefore give us "TV Freedom."

(Slide 13 – Google is going to blow it up)

But soon the advertising turned negative, as many political campaigns do. Google, the ads said, was trying to "blow up" TV Freedom by imposing net neutrality.

(Slide 14 – Hands off the Internet)

A group called "Hands off the Internet" put on ads arguing that net neutrality proponents were trying to regulate the Internet for the first time, that they were trying to put government in control of the Internet.

(Slide 15 – Meet the Congressman Who Regulated the Internet)

And they made veiled threats against Congressmen who might vote for net neutrality.

(Slide 16 – Road with Signs)

The ads and various arguments continue until this very day. And they have mostly been from one side – the telephone and cable companies against net neutrality.

(Slide 17 – Last summer...)

There have been ads from a pro-net neutrality coalition,, but they have been far and few between – and some would say not as effective.

(Slide 18 – What can you do?)

Right now, it is our sense that the most effective means of influencing this debate is from the grassroots – from people like all of you contacting your U.S. Senators. You can call your Senator's office, or email them, and express your support for net neutrality.

And you can learn more about the issue and educate people on your campuses to speak up, too. Educate your campus Government Relations representative, the office of the President, your CIO, and urge them to visit, write, call, or email Senators.

(Slide 19 – Internet2 end slide)