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INTERNATIONAL PROPOSALS TO REGULATE THE INTERNET

HEARING

BEFORE THE

SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY

OF THE

COMMITTEE ON ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

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INTERNATIONAL PROPOSALS TO REGULATE THE INTERNET

THURSDAY, MAY 31, 2012

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:21 a.m., in room 2123 of the Rayburn House Office Building, Hon. Greg Walden (chairman of the subcommittee) presiding.

Members present: Representatives Walden, Terry, Stearns, Shimkus, Bono Mack, Blackburn, Bilbray, Bass, Gingrey, Scalise, Latta, Guthrie, Kinzinger, Upton (ex officio), Eshoo, Markey, Matsui, Barrow, Christensen, Dingell (ex officio), and Waxman (ex officio).

Staff present: Gary Andres, Staff Director; Ray Baum, Senior Policy Advisor/Director of Coalitions; Mike Bloomquist, General Counsel; Sean Bonyun, Deputy Communications Director; Nicholas Degani, FCC Detailee; Andy Duberstein, Deputy Press Secretary; Neil Fried, Chief Counsel, Communications and Technology; Katie Novaria, Legislative Clerk; Andrew Powaleny, Deputy Press Secretary; David Redl, Counsel, Communications and Technology; Charlotte Savercool, Executive Assistant; Lyn Walker, Coordinator, Admin/Human Resources; Shawn Chang, Democratic Senior Counsel; Margaret McCarthy, Democratic Professional Staff; Roger Sherman, Democratic Chief Counsel; David Strickland, Democratic FCC Detailee; and Kara Van Stralen, Democratic Special Assistant.

OPENING STATEMENT OF HON. GREG WALDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. WALDEN. Good morning. I want to welcome our witnesses and appreciate their testimony today. This is the Subcommittee on Communications and Technology and our hearing on International Proposals to Regulate the Internet.

Nations from across the globe will meet at a United Nations forum in Dubai at the end of this year and, if we are not vigilant, just might break the Internet by subjecting it to an international regulatory regime designed for old-fashioned telephone service.

The Internet is the single largest engine of global change since the printing press. From its humble roots as a network to connect computers used for the Department of Defense projects, the Internet grew to include research institutions, commercial services, and the public generally. It was once the government relinquished its

grip on the Internet that it began growing exponentially, evolving into the "network of networks" that we all participate in today.

With this expansion came the recognition that the organizational structure must evolve as well. Functions that had previously been managed by and for the United States Government, like network addressing and domain name administration, were spun off to private-sector entities that could be more responsive to the rapid changes in the Internet. Nongovernmental institutions now manage the Internet's core functions with input from private- and public-sector participants. This structure, called the "multi-stakeholder model," prevents governmental or non-governmental actors from controlling the design of the network or the content it carries. The multi-stakeholder model also provides flexibility, enabling the Internet to evolve quickly.

And this evolution continues at a staggering pace. Cisco estimates that by 2016 roughly 45 percent of the world's population will be Internet users; there will be more than 18.9 billion network connections; and the average speed of mobile broadband will be four times faster than it is today. Weakening the multi-stakeholder model threatens the Internet, harming its ability to spread prosperity and freedom.

Yet this December at the World Conference on International Telecommunications (WCIT) in Dubai, the 193 member countries of the United Nation's International Telecommunications Union will consider expanding the ITU's jurisdiction to the Internet, replacing the multi-stakeholder model that has served the Internet and the world so well. They will also consider imposing economic regulations on the Internet.

The ITU was originally formed in 1865 to govern international regulation of the telegraph. The ITU finally updated its charter in 1988 by adopting the International Telecommunications Regulations but, even then, the communications world was dominated by voice telephony. It was in that world the ITU developed "settlement rates" at which service providers compensated each other for exchanging phone traffic across national borders. Now, the end result was high international call rates and a transfer of money to telephone companies run by foreign governments.

It would be inappropriate to apply an international regulatory scheme developed for the 1980s telephone networks to the vibrant and technologically diverse Internet. Such a regulatory regime ignores the reality of the architecture of the Internet. Unlike traditional telephony where the routing of circuit switched calls could easily be tracked, the networks that comprise the Internet do not adhere to political boundaries. Given the diversity of the networks that make up the modern Internet, any implementation of an international regulatory regime would quickly become so complex as to be unmanageable. We also live in a far more competitive world, making such economic regulation not only unnecessary, but also counterproductive.

The Internet has prospered under the multi-stakeholder model absent the heavy hand of government regulation. That model has enabled an Internet that creates jobs, brings a literal world of information to your fingertips, allows small businesses around the world to have a global reach, drives investment and innovation,

and has even started a revolution or two. As the U.S. delegation to the WCIT takes shape, I urge the administration to continue the United States' commitment to the Internet's collaborative governance structure and to reject international efforts to bring the Internet under government control.

With that, I yield the remainder of my time to the vice chairman of the subcommittee, Mr. Terry of Nebraska.

[The prepared statement of Mr. Walden follows:]

Opening Statement of the Honorable Greg Walden
Subcommittee on Communications and Technology
Hearing on "International Proposals to Regulate the Internet"
May 31, 2012
(As Prepared for Delivery)

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With this expansion came the recognition that the organizational structure must evolve as well. Functions that had previously been managed by and for the U.S. government, like network addressing and domain name administration, were spun off to private sector entities that could be more responsive to the rapid changes in the Internet. Non-governmental institutions now manage the Internet's core functions with input from private- and public-sector participants. This structure, called the "multi-stakeholder model," prevents governmental or non-governmental actors from controlling the design of the network or the content it carries. The multi-stakeholder model also provides flexibility, enabling the Internet to evolve quickly. And this evolution continues at a staggering pace. Cisco estimates that by 2016 roughly 45 percent of the world's population will be Internet users; there will be over 18.9 billion network connections; and the average speed of mobile broadband will be four times faster than it is today. Weakening the multi-stakeholder model weakens the Internet, harming its ability to spread prosperity and freedom.

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[The House Concurrent Resolution follows:]

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(Original Signature of Member)

112TH CONGRESS
2D SESSION

H. CON. RES. ____

Expressing the sense of Congress regarding actions to preserve and advance the multistakeholder governance model under which the Internet has thrived.

IN THE HOUSE OF REPRESENTATIVES

Mrs. BONO MACK (for herself, Mr. UPTON, Mr. WAXMAN, Mr. WALDEN, and Ms. ESHOO) submitted the following concurrent resolution; which was referred to the Committee on _____

CONCURRENT RESOLUTION

Expressing the sense of Congress regarding actions to preserve and advance the multistakeholder governance model under which the Internet has thrived.

Whereas given the importance of the Internet to the global economy, it is essential that the Internet remain stable, secure, and free from government control;

Whereas the world deserves the access to knowledge, services, commerce, and communication, the accompanying benefits to economic development, education, and health care, and the informed discussion that is the bedrock of democratic self-government that the Internet provides;

Whereas the structure of Internet governance has profound implications for competition and trade, democratization, free expression, and access to information;

Whereas countries have obligations to protect human rights, which are advanced by online activity as well as offline activity;

Whereas the ability to innovate, develop technical capacity, grasp economic opportunities, and promote freedom of expression online is best realized in cooperation with all stakeholders;

Whereas proposals have been put forward for consideration at the 2012 World Conference on International Telecommunications that would fundamentally alter the governance and operation of the Internet;

Whereas the proposals, in international bodies such as the United Nations General Assembly, the United Nations Commission on Science and Technology for Development, and the International Telecommunication Union, would justify under international law increased government control over the Internet and would reject the current multistakeholder model that has enabled the Internet to flourish and under which the private sector, civil society, academia, and individual users play an important role in charting its direction;

Whereas the proposals would diminish the freedom of expression on the Internet in favor of government control over content, contrary to international law;

Whereas the position of the United States Government has been and is to advocate for the flow of information free from government control; and

Whereas this and past Administrations have made a strong commitment to the multistakeholder model of Internet governance and the promotion of the global benefits of the Internet: Now, therefore, be it

1 *Resolved by the House of Representatives (the Senate*
2 *concurring),* That it is the sense of Congress that the As-
3 sistant Secretary of Commerce for Communications and
4 Information, in consultation with the Deputy Assistant
5 Secretary of State and United States Coordinator for
6 International Communications and Information Policy,
7 should continue working to implement the position of the
8 United States on Internet governance that clearly articu-
9 lates the consistent and unequivocal policy of the United
10 States to promote a global Internet free from government
11 control and preserve and advance the successful multi-
12 stakeholder model that governs the Internet today.

OPENING STATEMENT OF HON. LEE TERRY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEBRASKA

Mr. TERRY. Thank you, Mr. Chairman.

And I believe that the bottom-up stakeholder approach model has actually allowed economic development and prosperity in all levels of economy around the world. Therefore, when I hear comments from Prime Minister Vladimir Putin saying that international control over the Internet is one of the stated goals, we cannot allow this to happen. This will diminish economic prosperity.

This conference is about telephone and should not encroach into any discussions into regulation of the Internet whether it is disguised by phone numbers or IP addresses or cybersecurity. So I want to put those on notice from Russia or from China or other countries that when it comes to regulating the Internet, the answer is nyet.

Mr. WALDEN. Gentlemen's time is expired. I now recognize the distinguished ranking Democrat on the subcommittee, Ms. Eshoo, for 5 minutes.

OPENING STATEMENT OF HON. ANNA G. ESHOO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. ESHOO. Thank you, Mr. Chairman, and good morning to everyone and thank you for having this important hearing.

The Internet continues to grow and to flourish thanks to its open structure and its multi-stakeholder approach to governance. This is healthy. We have seen it. We have worked hard to make sure that these are the atmospherics for it. It is one of the great sources of pride to our Nation, the role that the government originally played, how it went out into the private sector, and it is one of the great success stories of American history. And I am very proud that so much of it resides in my district.

According to a recent study commissioned by the New Democratic Network and the NPI, the New Policy Institute, every 10 percent increase in the adoption of 3G and 4G wireless technologies has the potential to add more than 231,000 jobs to our national economy. So as the World Conference on International Communications prepares to meet later this year to review proposals that could actually radically alter the Internet's future, it is more than fitting for our subcommittee to convene this hearing to hear from some of our Nation's leading experts—and you are all a source of pride to us—from the public and private sectors.

The Internet has advanced rapidly since WCIT last met about a quarter of a century ago. A quarter of a century ago. I guess they don't meet that often. We have gone from dial-up modems—and maybe that is good—to high-speed Internet powered by fiber optics. With this dramatic boost in speed, consumers today can experience high-definition video, social networking, video conferencing, and much more without regard to where this content is hosted in the world. And I think that is the way it should be.

There is no question that there are real threats facing the Internet's continued growth and stability. Our three cybersecurity hearings held earlier this year are evidence of such vulnerabilities. But international proposals to impose new mandated mobile roaming

rates or termination charges for data traffic are a fundamental departure from the international telecommunication regulations adopted in 1988.

Beyond just imposing new regulation on how Internet traffic is handled, several nations are set on asserting intergovernmental control over the Internet. Now, we have had some real battles here over the issue of net neutrality, and it seems to me that we are calling on the international community for hands off, an international net neutrality, as it were, when it comes to the Internet. Balkanizing the Internet would and could bring about censorship and make that the norm. In the words of Vint Cerf, who is here today, "the decisions taken in Dubai in December have the potential to put government handcuffs on the net."

I think that we can all agree that the adoption of these proposals is a very serious threat to the free, transparent, and open Internet as we know it today. This is reflected in the bipartisan resolution that I join my colleagues in introducing yesterday. And today's hearing, along with a bipartisan congressional Internet caucus briefing, which I am cosponsoring next week, are an opportunity to discuss these issues and send a strong message that intergovernmental control over the Internet will uproot the innovation, openness, and transparency enjoyed by nearly 2.3 billion users around the world. And we want to keep it that way. We want that to double; we want it to quadruple; we want it to keep growing.

And so it seems to me that what we discuss today is of great, great importance but I also think we need to inoculate other countries with the ideas that will help take them away from where they are now. I don't think this can be America against the rest of the world. I think we need to form coalitions around the ideas that have worked and that they, too, can share in what we know is one of the most exciting inventions and adventures of not only the last century but this one as well.

And I think I have 1 second left so I don't have any time to yield to Ms. Matsui, and I apologize.

Mr. WALDEN. The gentlelady's time is expired.

I now recognize the chairman of the full committee, the gentleman from Michigan, Mr. Upton, for 5 minutes.

OPENING STATEMENT OF HON. FRED UPTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. UPTON. Well, thank you, Mr. Chairman.

The international community is going to meet in December to decide whether to regulate the Internet under rules designed for the 1980 era telephone networks. On the table is a proposal to expand the jurisdiction of the U.N.'s International Telecommunications Union to cover the Internet, moving away from the current multistakeholder governance model that has fostered the modern Internet. Also at issue is whether to impose rate regulation on the exchange of Internet traffic across national borders. Both of these are terrible ideas.

In a time of economic uncertainty and turmoil, the Internet does remain a job creation engine that fosters innovation, brings the folks of the world together in new ways, and drives global discussion of important social matters. The Internet has become this eco-

nomic and social juggernaut not because government actors willed it to be so but because the government took a step back and let the private sector drive its evolution. The non-regulatory, multi-stakeholder model allows the Internet community to guide its evolution and has provided the flexibility that the Internet needs to flourish as the demands placed on it grow.

The ITU and the international "settlement-of-rates" regime were designed around old-fashioned telephone networks and services when there was less competition. The Internet is a different technology and this is a different era. International regulatory intrusion into the Internet would have disastrous results not just for the United States, but for folks around the world. So I would strongly urge the administration to continue U.S. support for the multi-stakeholder model in its talks leading up to the Dubai meeting this December.

And I yield to the gentlelady from California, Mrs. Bono Mack.

[The prepared statement of Mr. Upton follows:]

Opening Statement of the Honorable Fred Upton
Subcommittee on Communications and Technology
Hearing on "International Proposals to Regulate the Internet"
May 31, 2012
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OPENING STATEMENT OF HON. MARY BONO MACK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mrs. BONO MACK. I thank the chairman.

As the U.S. prepares to take part in the World Conference on International Telecommunications in Dubai, we need to provide the delegation with a clear and unmistakable mandate: keep the Internet free of any government control. At the WCIT discussions, a new treaty on Internet governance will be debated.

Most worrisome to me are efforts by some countries to provide the U.N. with unprecedented new authority over the management of the Internet. To prevent this from happening, I have introduced House Concurrent Resolution 127. I would like to thank my cosponsors, Chairman Upton, Ranking Member Waxman, Subcommittee Chairman Walden, and Ranking Subcommittee Member Eshoo for their strong support in this effort.

In many ways, this is a referendum on the future of the Internet. For nearly a decade, the U.N. has been angling quietly to become the epicenter of Internet governance. A vote for our resolution is a vote to keep the Internet free from government control and to prevent Russia, China, and India, as well as other nations from succeeding in giving the U.N. unprecedented power over web content and infrastructure. If this power grab is successful, I am concerned that the next Arab Spring will instead become a Russia Winter where free speech is chilled, not encouraged, and the Internet becomes a wasteland of unfilled hopes, dreams, and opportunities. We simply cannot let that happen.

Thank you, Mr. Chairman. I yield back my time.

Mr. WALDEN. I now would recognize Mr. Stearns.

OPENING STATEMENT OF HON. CLIFF STEARNS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. STEARNS. Thank you, Mr. Chairman.

Following up with your comments and Chairman Upton about the monopoly from the 19th century, which we don't want to go back to, is there anybody in this room who thinks the United Nations could competently manage the Internet? Please raise your hands. I don't think there is anybody that does. In fact, I think all the witnesses will testify this morning that we must maintain the current multi-stakeholder decentralized approach. And this ITU, which is the International Telecommunication Union, it is a part of the United Nations and would require other countries to fund and build out the communication networks and give them full jurisdiction. And I again don't believe that we want to punt this to the U.N. These approaches constitute a frontal attack on the dynamic approach that we have presently.

So I want to promote the unified, bipartisan message against international regulation of the Internet. That is why we are here today. And I want to emphasize today that such an approach that we see from others is a nonstarter for the United States. And I yield——

Mr. WALDEN. I now recognize the gentlelady from Tennessee, Mrs. Blackburn.

OPENING STATEMENT OF HON. MARSHA BLACKBURN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Mrs. BLACKBURN. Thank you, Mr. Chairman.

And welcome to our witnesses. We are glad that you are here in this room, but I have no doubt that all around the world people are streaming this hearing because they want to see what our posture on this is going to be. And I think as you have heard that there is agreement, both sides of the aisle, that giving authority to an international governing body would put our Nation's sovereignty at risk. We are concerned about that and I think that the Obama administration should be commended for helping thwart this power grab. And I think we also need to realize that this is one of those areas where it raises the concerns we had about this administration's effort to undermine our efforts—Congress' efforts—in this developing fight against international regulatory schemes over the Internet because this administration moved forward with regulations over the management of Internet networks here in the United States.

So we are going to continue to work to reign in the regulatory explosion of the FCC. Now is the time to execute a serious game plan that deals with those who would put international politics ahead of an open and prosperous Internet. We may have our differences on domestic telecommunications policy, but having those policies decided at the international level would be the worst thing that could happen for the future of the Internet.

Again, welcome to everyone. I appreciate the time. Yield.

Mr. WALDEN. The chair now recognizes the ranking member, Mr. Waxman, for 5 minutes.

OPENING STATEMENT OF HON. HENRY A. WAXMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. WAXMAN. Thank you very much, Mr. Chairman, for holding this hearing. It is an important hearing as we look down the road to an international conference where some of the proposals, if adopted, would fundamentally alter the way the Internet operates today, undermining the decentralized, multi-stakeholder approach to Internet governance that has allowed the Internet to flourish and become such a powerful engine for social and economic progress.

As we will hear from our witnesses today—and people can also sense from the opening statements—there is a strong bipartisan consensus throughout the administration and Congress that we must resist efforts by some countries to impose a top-down command-and-control management regime on the Internet. This bipartisan consensus is reflected in H. Con. Res. 127, a resolution introduced yesterday by Chair Bono Mack and cosponsored by Chairman Upton, myself, Chairman Walden, and Ranking Member Eshoo. Simply put, this resolution affirms that Democrats and Republicans both want the administration to continue advancing our national commitment to the multi-stakeholder model of Internet governance and a globally open Internet.

We have two distinguished panels of witnesses today who have a long history of working on this issue. I want to welcome Ambassador Phil Verveer, who will be one of the administration's lead negotiator on the treaty known as the International Telecommunications Regulations at the World Conference on International Telecommunications in December. And I believe that Ambassador Verveer's experience in communications and antitrust law will serve the U.S. position well.

And we are pleased to have Commissioner Rob McDowell back to our subcommittee. He has been focused on this issue for some time, expressing a strong leadership position and we are pleased to have him with us.

Our second panel is also highly experienced. Former ambassador David Gross and Sally Wentworth both served the previous administration with distinction and have significant experience with information and communications technology sectors. And I want to welcome Vint Cerf. As one of the founders of the Internet, Dr. Cerf will be able to provide us with a unique perspective about how some of the proposals before the international meeting threaten the security and stability of the Internet.

We all agree that the current and past administrations deserve credit for their efforts to ensure the Internet remains a tool for global dissemination of ideas, information, and commerce. There is no daylight between House Democrats and House Republicans or the administration on this issue.

While we are largely focused on the upcoming World Conference, we should not lose sight of the fact that the push for more centralized control over the Internet is occurring through other international venues as well.

Mr. Chairman, I want to yield the balance of my time to Ms. Matsui so she could give an opening statement.

OPENING STATEMENT OF HON. DORIS O. MATSUI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. MATSUI. Thank you, Ranking Member, for yielding me time.

And I also want to welcome Ambassador Verveer and Commissioner McDowell and the rest of the panelists for joining us today.

As we know, in today's global economy with well over two billion users, the Internet has become a necessity and not a luxury. And that is why I believe that a free, transparent, and open Internet must continue. The current multi-stakeholder approach has allowed the Internet to flourish here in the U.S. and around the world. Any international authority over the Internet is troublesome, particularly if those efforts are being led by countries where censorship is the norm.

I agree with many of our witnesses that it would harm efforts to combat cyber attacks, decrease adoption and innovation of the latest technologies, and interfere with many fundamental principles that allow the Internet to be an ecosystem for innovation and growth. I am also pleased that the administration understands these concerns and believes as such that an international mandated framework would simply not work.

We need to continue to promote innovation and openness of the Internet around the globe. I believe that the multi-stakeholder approach must continue to define Internet governance.

And with that, I yield back the balance of my time.

Mr. WAXMAN. I yield back my time.

Mr. WALDEN. The gentleman yields back the balance of his time.

So now I think we proceed to the witnesses. We are delighted to have you both here. And Ambassador Verveer, Deputy Assistant Secretary of State, and U.S. Coordinator for International Communications and Information Policy, we welcome you. And Commissioner Robert McDowell of the Federal Communications Commission, we welcome you back.

Ambassador Verveer, thank you for being with us. We look forward to your testimony. Yes, pull that mike close and we will all be able to hear. You need to push the little button.

STATEMENTS OF PHILIP L. VERVEER, DEPUTY ASSISTANT SECRETARY OF STATE AND U.S. COORDINATOR FOR INTERNATIONAL COMMUNICATIONS AND INFORMATION POLICY, DEPARTMENT OF STATE; AND ROBERT M. MCDOWELL, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

STATEMENT OF PHILIP L. VERVEER

Mr. VERVEER. Chairman Walden, Ranking Member Eshoo, and members of the subcommittee, thank you for this opportunity. I am particularly pleased to appear with my friend Commissioner Robert McDowell, and I am very happy that the subcommittee will hear later from my friend and distinguished predecessor Ambassador David Gross, from Sally Wentworth, who played a significant role in Internet governance matters during her service at the State Department, and of course from Vint Cerf without whom we might not have the Internet at all.

Over the years, a relatively small number of governments have made proposals to change today's successful approach to Internet governance. Typically, these proposals involve the United Nations in one of its many manifestations, including the General Assembly, the Commission on Science and Technology for Development, and the International Telecommunication Union. The U.S. Government and others have successfully opposed these proposals but it is important to recognize that this will be a continuing debate.

From the privatization of the Internet in the mid-1990s, the United States has been committed to a multi-stakeholder approach to its governance. That has been true from one administration to another. It represents a policy with thorough—it is not too strong to say unanimous—bipartisan support. The present Internet governance arrangements rely upon a collection of specialized institutions of which the Internet Society, ICANN, the IETF, and the World Wide Web Consortium are important examples. They are noteworthy for two things. The first is their expertise, inclusivity, and openness; the second is the remarkable success that they have achieved. This is one of the reasons we wish to preserve these institutions as the instruments of Internet governance. They work and they work remarkably well.

There are two other reasons underlying our commitment to preventing the Internet from falling subject to intergovernmental controls. First, it inevitably would diminish the dynamism that is one of the Internet's greatest strengths. The existing arrangements permit the Internet to evolve organically in response to changes in technology, business practice, and consumer behavior. For reasons that cannot be overcome, intergovernmental controls would prevent this.

Second, intergovernmental controls could be recruited in aid of censorship and repression. The United States is deeply committed to freedom of expression and the free flow of information. We appreciate that some nations, however, do not share these commitments. We particularly wish to preclude any developments that threaten to reduce Internet freedom that would impair freedom of expression, assembly, or association online.

As an alternative to intergovernmental controls, the United States encourages governments to adopt multi-stakeholder, transparent, and decentralized approaches. Last year's high-level ministerial meeting at the OECD both exemplified and codified this approach.

Now, with respect to the World Conference on International Telecommunications, in December, representatives of 193 nations will gather in Dubai to consider revisions to the international telecommunications regulations. A year and more ago there was concern that the WCIT would be a battle over investing the IT with explicit Internet governance authority and that the conference participants would be confronting wholly new standalone draft text proposing Internet governance provisions.

In response, the United States advanced the advantages of using the exiting ITRs as a basis for treaty negotiations. I am pleased to say that the majority of the ITU's members have agreed with us in this regard. The exiting ITRs have been accepted as a framework for negotiations. There are no pending proposals to vest the IT with direct Internet governance authority. Instead, thus far, traditional telecom issues such as roaming and fraud prevention have taken center stage.

The State Department's preparations for the WCIT have been in progress for about 18 months. On an ongoing basis, we host the International Telecommunications Advisory Committee, or ITAC, a forum open to all interested parties to review and advise on the regional and national contributions to WCIT as they are submitted. Earlier this month, we established our core delegation consisting of U.S. Government officials. In September, we will complete the delegation with the addition of private sector members.

Earlier this week, the President advised the Senate of his selection of Terry Kramer of California as the United States' Head of Delegation and of his intention to confer ambassadorial rank on Mr. Kramer in connection with this assignment.

A great deal of preparatory work has been done but a great deal more remains to be done. In our work, the United States has the significant advantage of unanimity of purpose. We benefit from the fact that government officials of both parties, civil society, and the corporate sector all are committed to the preservation of the multi-stakeholder model and the resolution which was introduced this

week and which has been mentioned today is a very important contribution to showing that unanimity.

We look forward to continuing to work with the Congress as we approach the WCIT and other matters that involve Internet governance. I greatly appreciate the opportunity you are providing with this hearing to affirm the continuing value of our approach to Internet governance not just to U.S. citizens but to everyone in the world.

I would be very pleased to respond to any questions you might have.

[The prepared statement of Mr. Verveer follows:]

Testimony of Ambassador Philip Verveer

Deputy Assistant Secretary of State and United States Coordinator for International Communications and Information Policy

Hearing on

International Proposals to Regulate the Internet

Subcommittee on Communications and Technology,
Committee on Energy and Commerce
United States House of Representatives

May 31, 2012

Chairman Walden, Ranking Member Eshoo, and distinguished Committee Members, thank you for the opportunity to testify about international proposals to regulate the Internet. I am pleased to participate with my friend Commissioner Robert McDowell. And I am very happy that the Subcommittee will hear from my friend and distinguished predecessor Ambassador David Gross, from Sally Wentwerth, who contributed a great deal to Internet governance issues during her service at the U.S. State Department, and from Vint Cerf, without whom there might well be no Internet to disrupt.

At the onset, it's imperative to note that international proposals on Internet issues have been recently discussed in multiple bodies under the aegis of the United Nations – including, for example, the General Assembly, the Commission on Science and Technology for Development (CSTD), and the International Telecommunication Union (ITU). Our reaction to these proposals reflects the consistent bi-partisan approach to Internet governance issues that has prevailed since the privatization of the Internet in the 1990s.

The U.S. Government – joined by civil society, industry, and like-minded governments – has successfully opposed such proposals. At the United Nations General Assembly last year, four nations introduced for discussion a proposed "code of conduct" for global information security, but they did not introduce a resolution to adopt or endorse the proposed code of conduct and the General Assembly took no formal action. At the CSTD, a UN body that

provides the General Assembly with advice on technology particularly with respect to developing countries, a few nations last week sought to establish – but failed – a UN entity to mandate international public policy relating to the Internet. And, at the most recent ITU Plenipotentiary conference in 2010, we joined with other nations in defeating efforts to expand the ITU's remit to Internet policymaking and regulation.

In all bilateral encounters and multilateral meetings, the United States consistently opposes the extension of intergovernmental controls over the Internet. Remitting the Internet to intergovernmental control – whether the ITU or otherwise – would produce two very bad outcomes. It inevitably would diminish the dynamism of the Internet. As stressed in the President's Cyberspace Policy Review, policymakers "must be careful not to create policy and regulation that inhibits innovation or results in inefficiencies or less security" and his *International Strategy for Cyberspace* set as a top policy priority promoting and enhancing multi-stakeholder venues for the discussion of these issues. For reasons that cannot be overcome, intergovernmental institutions are slow in taking decisions, a quality incompatible with the unremitting desire for efficiency that we see with the Internet. They do not meaningfully include the crucial views of civil society, academia and industry – all essential stakeholders in Internet public policy making. In addition, intergovernmental controls inevitably would open the way for the introduction of extraneous considerations, the most noxious of which would be censorship or content controls by repressive regimes.

As an alternative to regulation or intergovernmental controls, the United States Government encourages governments to work in the established, successful multi-stakeholder, transparent environment to achieve international public policy goals and strengthen international cooperation on Internet related issues. This encouragement most recently occurred at a high-level ministerial meeting at the Organisation for Economic Co-operation and Development (OECD) in June 2011. There, representatives from business, civil society, and the Internet technical communities from 34 countries joined government officials in discussing the importance of a free and open Internet, and the OECD Member States, together with business and technical communities joined in a communiqué of fundamental Internet policy-making principles that was subsequently adopted by all OECD Member States. These Internet Policymaking Principles are an important milestone in our effort to secure a free and open Internet globally because as

an OECD Recommendation, they represent a commitment by all current OECD Member States, and form a standard against which new Member States applications to join the OECD will be judged.

Today, my testimony will consist of three parts: first, to describe how the absence of governmental or intergovernmental controls greatly aided the Internet's development thus far; second, to provide background about the International Telecommunication Union; and finally, to describe efforts undertaken by the U.S. Government thus far in advance and in preparation for the 2012 World Conference on International Telecommunications (WCIT).

A. The Internet's development relied upon – and continues to rely upon – an amalgam of innovators, volunteers, and civil society members that have succeeded in the absence of intergovernmental regulation.

In the space of half a generation, the Internet has become one of the most important mechanisms on the planet for both the developed and developing world. Every human being, whether aware of it or not, depends upon it for material well being and for broader, non-economic benefits in social, cultural, political and other realms.

The Internet's unprecedented growth is not the only unusual thing about it. Equally unusual is that it is the largest and most successful cooperative venture in history. It has emerged without much significant guidance from above – not planned in a conventional sense and not constructed pursuant to comprehensive legal and regulatory strictures. It is, in President Obama's words, "one of the finest examples of a community self-organizing."

Rather, the Internet evolved from its Arpanet origins as a result of the efforts of innumerable parties in interest – some essentially academic and financially uninterested, some decidedly financially interested, and some in between. In a genuine sense, an amalgam of volunteers inspired by a very wide range of motivations has created and operates this indispensable network of networks.

Global interconnection is, of course, the single greatest imperative for a network of networks. And here the absence of governmental or intergovernmental controls is particularly striking. The physical and

economic arrangements necessary for – that in a real sense constitute – interconnection have been worked out through normal adherence to international technical standards and through commercial negotiation. National governments, let alone international institutions, have not intervened to direct the creation of the controlling technical standards, have not mandated that the standards be observed, and have not prescribed the economic transfers that take place between and among the participating networks. This doesn't reflect an absence of law. The laws of property, contract, and tort apply as they do in any commercial realm. And, competition and consumer protection laws restrain businesses on-line.

Accordingly, the Internet we enjoy today did not develop by happenstance. It emerged as the hard work of multi-stakeholder organizations such as the Internet Society, the Internet Engineering Task Force (IETF), the Internet Corporation for Assigned Names and Numbers (ICANN) and the World Wide Web Consortium (W3C). These organizations and others have played a major role in designing and operating the Internet we know today. These multi-stakeholder processes have succeeded by their very nature of openness and inclusiveness. They are most capable of addressing issues with the speed and flexibility required in this rapidly changing Internet environment.

B. The Scope of the International Telecommunications Regulations Should Not Be Expanded.

The International Telecommunication Union was founded in 1865. It is the second oldest international organization in existence. It does a great deal to advance the extent and the efficiency of international communications, most famously and most importantly serving as the organization that coordinates the world's use of radio frequencies.

Over time, it developed very detailed regulation for international telegraphy and rather less detailed regulation for international telephony. Separate Telephone Regulations emerged in 1932. Five plus decades later, in 1988, at the World Administrative Telegraph and Telephone Conference (WATTC) in Melbourne, the previously separate Telegraph Regulations and Telephone Regulations were merged into a single set of regulations—the International Telecommunication Regulations (ITRs) dealing with the international telephone network, methods of charging, and international accounting. And in 1992, in Geneva, another ITU conference substituted the

WATTC in favor of future World Conferences on International Telecommunications (WCIT). And that is where things stand today.

The 1988 ITRs—unavoidably—to some extent reflect the narrowband world in which they were created. They also reflect and reinforce—for different reasons, unavoidably—the conventions that governed international telephony at the time, including an environment in most of the world where each country owned or regulated a monopoly telecommunications service provider. Thus, the ITRs address the functioning of international networks, methods of charging for international communications, and methods of accounting for the charges in that context. A similar approach today would be impossible given the multiplicity of players.

There are numerous reasons why an attempt to apply updated ITRs to the Internet would be counterproductive, and why we must resist them as a matter of the utmost priority. Governmental proposals to expand the ITR's to include centralized control over the Internet through a top-down government approach would put political dealmakers, rather than innovators and experts, in charge of the future of the Internet. This would slow the pace of innovation, hamper global economic development, and potentially lead to an era of unprecedented control over what people can say and do online. Centralized control would threaten the ability of the world's citizens to freely connect and express themselves by placing decision-making power in the hands of global leaders some of whom inevitably will have ambiguous attitudes about the value of free speech.

C. U.S. Government Preparation for and in Advance of the WCIT

The U.S. State Department – and the entire U.S. Government – is actively engaged with our global partners in a variety of international fora, including the ITU, and remains committed to working with all Internet stakeholders to defend and strengthen the open, interoperable, secure, reliable, and innovative Internet.

In 2011, President Obama released his International Strategy for Cyberspace, which stated that, "[p]reserving, enhancing, and increasing access to an open, global Internet is a clear policy priority." This strategy has provided our government with clear direction to support the multi-stakeholder model of Internet governance while resisting attempts to create intergovernmental mechanisms of control.

The Department of State, for example, is coordinating with the private sector and international allies in opposing any renewed calls for the establishment of a new, intergovernmental mechanism within the UN system to coordinate international public policy pertaining to the internet at the fall session of the UN General Assembly.

To assure consistent implementation of the President's strategy across the Administration, we formed the National Science and Technology Committee's Subcommittee on Global Internet Governance[1] to provide an interagency body to monitor and advise developments in the range of international fora with the goal of preserving and supporting the multi-stakeholder approach to Internet governance.

With respect to the ITU, the United States' delegation went to the most recent ITU Plenipotentiary meeting in Guadalajara, Mexico in October 2010 with the aim of maintaining and, where appropriate, strengthening the ITU's important functions. We also went to Guadalajara with the strong intention of dissuading national administrations from seeking to expand the ITU's remit beyond useful limits, and especially from asserting additional claims to a privileged policy position, or outright jurisdiction over Internet issues.

We succeeded. The conference affirmed the importance of the practical Internet-related technical and developmental assistance the ITU is rendering its members and it defined the ITU's appropriately limited place in the Internet eco-system. As to the latter, the Plenipotentiary called for "greater collaboration and coordination between the ITU and the relevant organizations" (including but not limited to) the Internet Corporation for Assigned Names and Numbers, the Regional Internet Registries, the Internet Engineering Task Force, the Internet Society, and the World Wide Web Consortium. We believe that this reflects an accurate statement of the ITU's place. It is one among many, and the majority of the others are a reflection of the multi-stakeholder universe that has advanced and sustained the Internet's development. Stated differently, the Plenipotentiary resolution that contained this language recognizes that it would be inappropriate to assign the ITU a role beyond the bounds of its technical competence, let

[1] http://www.whitehouse.gov/sites/default/files/microsites/ostp/gig_charter_signed.pdf

alone to assign it responsibilities for the Internet's evolving architecture or mechanisms for economic integration.

Many other governments joined with the United States in securing this outcome. Unsurprisingly, democratic nations around the world are among those most anxious to prevent the Internet from falling under intergovernmental control. The factors, among others, that account for this are the commitment to freedom of expression as well as a qualified belief that the marketplace will produce satisfactory outcomes more often than not.

Following the Plenipotentiary and partially in anticipation of WCIT, the United States then focused on furthering that coalition through the development of the OECD's Internet Policymaking Principles. These principles, designed to preserve the fundamental openness of the Internet while ensuring its continued growth and dynamism, are predicated on the idea of using multistakeholder processes to address key Internet policy issues as opposed to international treaty based regimes.

In December of this year, 193 nations will gather at the WCIT in Dubai to revisit the International Telecommunication Regulations. One year ago, there was concern that WCIT would be a battle over investing the ITU with explicit authority for Internet issues, and that the U.S. would be confronting wholly new, stand-alone draft treaty texts proposing Internet governance provisions. In response, the US Government developed a detailed WCIT position that sought to use the existing ITRs as the basis for treaty negotiations and – within the more narrowly subscribed scope and focus of those existing provisions – achieve further deregulation and liberalization of international telecommunications markets.

By any measure, calendar year 2011 bore fruit for the U.S. in this regard. The existing ITRs have been accepted as a framework for negotiations. There are no pending proposals to vest the ITU with direct Internet governance authority. Instead, thus far, traditional telecom issues such as roaming and fraud have taken center stage. Based on formal filings made thus far, and informal proposals being considered by various ITU regions, much of the world seems to be saying that practical telecom issues should be the focus of WCIT to address the many issues relating from wireline to wireless communications. There are, however, some proposals related to the Internet, which, if accepted, could limit the Internet as an open and innovative platform by potentially allowing governments to monitor and

restrict content or impose economic costs upon international data flows. While such proposals are outliers amongst the more traditional telecommunications issues, we are taking their existence seriously and working closely with our allies to prevent their inclusion.

The United States Government has, as is typical, been actively coordinating its efforts with the private sector and international allies for many months. The U.S. State Department has convened a core delegation of government officials that includes senior level representatives from the Departments of Commerce, Defense, Homeland Security, and the Federal Communications Commission to prepare a US submission to the Conference by early August. The US submission will reinforce the US commitment to not expand the ITRs to issues relating to Internet governance. Earlier this week, the White House advised the Congress that it has selected a Head of Delegation for this conference. We have held a number of preparatory meetings with key engagement regions, and have reached an understanding with many countries that issues relating to "Internet governance" not be included in any update of the ITRs.

We look forward to continuing to work with you in the months ahead.

I appreciate the opportunity the Subcommitee is providing today to spread greater awareness of the WCIT as well as for the bipartisan offers of support and help.

I would be pleased to respond to any questions you may have.

Mr. WALDEN. Thank you, Mr. Ambassador. We appreciate the work you put into your testimony and the work you are doing for the country.

We turn now to Commissioner McDowell. We appreciate you being here and your loud and clear voice on this issue as well. And we welcome your son as well. Do you want to introduce your special assistant there today?

STATEMENT OF ROBERT M. MCDOWELL

Mr. MCDOWELL. Yes, one of my many supervisors, Mr. Chairman, my oldest son Griffin who is 12. This is his first day of summer vacation but he wanted to see how his tax dollars were being spent.

Mr. WALDEN. Wow, you brought him up here for that?

Mr. MCDOWELL. Yes, let us fill out a press conference after the hearing——

Mr. WALDEN. That is right.

Mr. MCDOWELL [continuing]. And he will let us know what his conclusion is. But thank you very much, Mr. Chairman and Ranking Member Eshoo and all members of the subcommittee. It is a pleasure to be here today. It is also an extreme honor to be seated next to my friend and colleague, Ambassador Verveer, as well as right before the next panel good friends as well, Ambassador Gross, Dr. Cerf, and Ms. Wentworth as well. So they are going to be outstanding witnesses.

First, please let me allow to dispense quickly and emphatically any doubts internationally about the bipartisan resolve of the United States to resist efforts to expand the ITU's authority over Internet matters. Some ITU officials have dismissed our concerns over this issue as mere election year politics and nothing could be further from the truth, as evidenced by Ambassador Verveer's testimony today, as well as recent statements from the White House, Executive Branch agencies, Democratic and Republican Members of Congress, and my friend and colleague at the FCC, Chairman Julius Genachowski. We are unified on the substantive arguments and always have been.

Second, it is important to define the challenge before us. The threats are real and not imagined, although they admittedly sound like works of fictions at some times. For many years now, scores of countries led by China, Russia, Iran, Saudi Arabia, but many, many others have pushed for—as Vladimir Putin said almost a year ago—international control of the Internet through the ITU. Now, I have tried to find a more concise way to express this issue but I can't seem to improve on Mr. Putin's crystallization of the effort that has been afoot for quite some time. More importantly, I think we should take Mr. Putin's designs very seriously.

Six months separate us from the renegotiation of the 1988 treaty that led to insulating the Internet from economic and technical regulation. What proponents of Internet freedom do or don't do between now and then will determine the fate of the net and affect global economic growth as well as determine whether political liberty can proliferate.

During the treaty negotiations, the most lethal threat to Internet freedom may not come from a full frontal assault but through in-

sidious and seemingly innocuous expansions of intergovernmental powers. This subterranean effort is already underway. While influential ITU-member states have put forth proposals calling for overt legal expansions of United Nations' or ITU authority over the net, ITU officials have publicly declared that the ITU does not intend to regulate Internet governance while also saying that any regulations should be of the light-touch variety.

But which is it? It is not possible to insulate the Internet from new rules while also establishing a light-touch regulatory regime. Either a new legal paradigm will emerge in December or it won't. The choice is binary.

Additionally, as a threshold matter, it is curious that ITU officials have been opining on the outcome of the treaty negotiation. The ITU's member states determine the fate of any new rules, not ITU leadership or staff. I remain hopeful that the diplomatic process will not be subverted in this regard. As a matter of process and substance, patient and persistent incrementalism is the net's most dangerous enemy and incrementalism is the tactical hallmark of many countries that are pushing the pro-regulation agenda.

Specifically, some ITU officials and member states have been discussing an alleged worldwide phone numbering crisis. It seems that the world may be running out of phone numbers of which the ITU does have some jurisdiction. Today, many phone numbers are used for voiceover Internet protocol services such as Skype or Google Voice. To function properly, the software supporting these services translate traditional phone numbers into IP or Internet addresses. The Russian Federation has proposed that the ITU be given jurisdiction over IP addresses to remedy the phone numbers shortage. What is left unsaid, however, is that potential ITU jurisdiction over IP addresses would enable it to regulate Internet services and devices with abandon. IP addresses are a fundamental and essential component to the inner workings of the net. Taking their administration away from the bottom-up, nongovernmental, multi-stakeholder model and placing it into the hands of international bureaucrats would be a grave mistake.

Other efforts to expand the ITU's reach into the Internet are seemingly small but are tectonic in scope. Take, for example, the Arab States' submission from February that would change the rules' definition of "telecommunications" to include "processing" or computer functions. This change would essentially swallow the Internet's functions with only a tiny edit to existing rules.

When ITU leadership claims that no member states have proposed absorbing Internet governance into the ITU or other intergovernmental entities, the Arab States' submission alone demonstrates that nothing could be further from the truth. An infinite number of avenues exist to accomplish the same goal and it is camouflaged subterfuge that proponents of Internet freedom should watch for most vigilantly for years to come.

Other examples come from China. China would like to see the creation of a system whereby Internet users are registered using their IP addresses. In fact, last year, China teamed up with Russia, Tajikistan, and Uzbekistan to propose to the U.N. General Assembly that it create "an international code of conduct for information security" to "mandate international norms and rules standardizing

the behavior of countries concerning information and cyberspace." Now, does anyone here today believe that these countries proposals would encourage the continued proliferation of an open and freedom-enhancing Internet or would such constructs make it easier for authoritarian regimes to identify and silence political dissidents? These proposals may not technically be part of the WCIT negotiations, at least not yet, but they give a sense of where some of the ITU's member states would like to go.

Still other proposals—very quickly—that have been made personally to me by foreign government officials include the creation of an international universal service fund of sorts whereby foreign—usually state-owned—telecom companies would use international mandates to charge certain web destinations on a per-click basis to fund the build-out of broadband infrastructure across the globe. Estimates of that start at $800 billion. Google, iTunes, Facebook, and Netflix are mentioned most often as prime sources of funding.

In short and in conclusion, the U.S. and likeminded proponents of Internet freedom and prosperity across the globe should resist efforts to expand the powers of intergovernmental bodies over the Internet even in the smallest of ways. As my supplemental statement and analysis explains in more detail, such a scenario would be devastating to global economic activity as well as political freedom, but it would hurt the developing world the most.

So thank you for the opportunity to appear before you today and I look forward to you questions.

[The prepared statement of Mr. McDowell follows:]

STATEMENT
OF
COMMISSIONER ROBERT M. MCDOWELL
FEDERAL COMMUNICATIONS COMMISSION

BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON
COMMUNICATIONS AND TECHNOLOGY

INTERNATIONAL PROPOSALS TO REGULATE THE INTERNET

MAY 31, 2012

Thank you, Chairman Walden, Ranking Member Eshoo, and Members of the Subcommittee for inviting me to join you today. Tomorrow will mark my sixth anniversary as an FCC commissioner, and every day has been an honor and a privilege. I am pleased to be back before you. As always, I look forward to answering any questions you may have.

It is a pleasure and an honor to testify beside my friend, Ambassador Phil Verveer. First, please allow me to dispense quickly and emphatically any doubts about the *bipartisan* resolve of the United States' to resist efforts to expand the International Telecommunication Union's ("ITU") authority over Internet matters. Some ITU officials have dismissed our concern over this issue as mere "election year politics." Nothing could be further from the truth as evidenced by Ambassador Verveer's testimony today as well as recent statements from the White House, Executive Branch agencies, Democratic and Republican Members of Congress and my friend and colleague, FCC Chairman Julius Genachowski. We are unified on the substantive arguments and have always been so.

Second, it is important to define the challenge before us. The threats are real and not imagined, although they admittedly sound like works of fiction at times. For many years now, scores of countries led by China, Russia, Iran, Saudi Arabia, and many others, have pushed for, as then-Russian Prime Minister Vladimir Putin said almost a year ago, "international control of the Internet" through the ITU.[1] I have tried to find a more concise way to express this issue, but I can't seem to improve upon now-President Putin's crystallization of the effort that has been afoot for quite some time.

Six months separate us from the renegotiation of the 1988 treaty that led to insulating the Internet from economic and technical regulation. What proponents of Internet freedom do or

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[1] Vladimir Putin, Prime Minister of the Russian Federation, Working Day, GOV'T OF THE RUSSIAN FED'N, http://premier.gov.ru/eng/events/news/15601/ (June 15, 2011) (last visited May 14, 2012).

don't do between now and then will determine the fate of the Net, affect global economic growth and determine whether political liberty can proliferate. During the treaty negotiations, the most lethal threat to Internet freedom may not come from a full frontal assault, but through insidious and seemingly innocuous expansions of intergovernmental powers.

This subterranean effort is already under way. While influential ITU Member States have put forth proposals calling for overt legal expansions of United Nations' or ITU authority over the Net, ITU officials have publicly declared that the ITU does not intend to regulate Internet governance while also saying that any regulations should be of the "light-touch" variety.[2] But which is it? It is not possible to insulate the Internet from new rules while also establishing a new "light touch" regulatory regime. Either a new legal paradigm will emerge in December or it won't. The choice is binary.

Additionally, as a threshold matter, it is curious that ITU officials have been opining on the outcome of the treaty negotiation. The ITU's Member States determine the fate of any new rules, not ITU leadership and staff. I remain hopeful that the diplomatic process will not be subverted in this regard.

As a matter of process and substance, patient and persistent incrementalism is the Net's most dangerous enemy and it is the hallmark of many countries that are pushing the pro-regulation agenda. Specifically, some ITU officials and Member States have been discussing an alleged worldwide phone numbering "crisis." It seems that the world may be running out of phone numbers, over which the ITU *does* have some jurisdiction. Today, many phone numbers are used for voice over Internet protocol services such as Skype or Google Voice. To function properly, the software supporting these services translate traditional phone numbers into IP

[2] Speech by ITU Secretary-General Touré, *The Challenges of Extending the Benefits of Mobile* (May 1, 2012),http://www.itu.int/net/pressoffice/press_releases/index.aspx?lang=en (last visited May 29, 2012).

addresses. The Russian Federation has proposed that the ITU be given jurisdiction over IP addresses to remedy the phone number shortage.[3] What is left unsaid, however, is that potential ITU jurisdiction over IP addresses would enable it to regulate Internet services and devices with abandon. IP addresses are a fundamental and essential component to the inner workings of the Net. Taking their administration away from the bottom-up, non-governmental, multi-stakeholder model and placing it into the hands of international bureaucrats would be a grave mistake.

Other efforts to expand the ITU's reach into the Internet are small but not subtle. Take for example the Arab States' submission from February that would change the rules' definition of "telecommunications" to include "processing" or computer functions.[4] This change would essentially swallow the Internet's functions with only a tiny edit to existing rules.[5]

China would like to see the creation of a system whereby Internet users are registered using their IP addresses. In fact, last year, China teamed up with Russia, Tajikistan and Uzbekistan to propose to the UN General Assembly that it create an "International Code of Conduct for Information Security" to mandate "international norms and rules standardizing the behavior of countries concerning information and cyberspace."[6] Does anyone here today believe

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[3] *Further Directions for Revision of the ITRs*, Russian Federation, CWG-WCIT12 Contribution 40, at 3 (2011), http://www.itu.int/md/T09-CWG.WCIT12-C-0040/en (last visited May 29, 2012) ("To oblige ITU to allocate/distribute some part of IPv6 addresses (as same way/principle as for telephone numbering, simultaneously existing of many operators/numbers distributors inside unified numbers space for both fixed and mobile phone services) and determination of necessary requirements.").

[4] *Proposed Revisions*, Arab States, CWG-WCIT12 Contribution 67, at 3 (2012), http://www.itu.int/md/T09-CWG.WCIT12-C-0067/en (last visited May 29, 2012).

[5] And Iran argues that the current definition already includes the Internet. *Contribution from Iran*, The Islamic Republic of Iran, CWG-WCIT12 Contribution 48, Attachment 2 (2011), http://www.itu.int/md/T09-CWG.WCIT12-C-0048/en (last visited May 29, 2012).

[6] Letter dated 12 September 2011 from the Permanent Representatives of China, the Russian Federation, Tajikistan, and Uzbekistan to the United Nations addressed to the Secretary-General, Item 93 of the provisional agenda - Developments in the field of information and telecommunications in the context of international security, 66th Session of the United Nations General Assembly, Annex (Sep. 14, 2011), http://www.cs.brown.edu/courses/csci1800/sources/2012_UN_Russia_and_China_Code_o_Conduct.pdf (last visited May 29, 2012).

that these countries' proposals would encourage the continued proliferation of an open and freedom-enhancing Internet? Or would such constructs make it easier for authoritarian regimes to identify and silence political dissidents?

Still other proposals that have been made personally to me by foreign government officials include the creation of an international universal service fund of sorts whereby foreign – usually state-owned – telecom companies would use international mandates to charge certain Web destinations on a "per-click" basis to fund the build-out of broadband infrastructure across the globe. Google, iTunes, Facebook and Netflix are mentioned most often as prime sources of funding.

In short, the U.S. and like-minded proponents of Internet freedom and prosperity across the globe should resist efforts to expand the powers of intergovernmental bodies over the Internet even in the smallest of ways. As my supplemental statement and analysis explains in more detail below, such a scenario would be devastating to global economic activity, but it would hurt the developing world the most.

Thank you for the opportunity to appear before you today and I look forward to your questions.

* * *

FCC Commissioner Robert M. McDowell
Supplemental Statement and Analysis
May 31, 2012

Thank you, Chairman Walden and Ranking Member Eshoo, for holding this hearing. Its topic is among the most important public policy issues affecting global commerce and political freedom: namely, whether the International Telecommunication Union (ITU), or any other intergovernmental body, should be allowed to expand its jurisdiction into the operational and economic affairs of the Internet.

As we head toward the treaty negotiations at the World Conference on International Telecommunications (WCIT) in Dubai in December, I urge governments around the world to avoid the temptation to tamper with the Internet. Since its privatization in the early 1990s, the Internet has flourished across the world under the current deregulatory framework. In fact, the long-standing international consensus has been to keep governments from regulating core functions of the Internet's ecosystem.

Yet, some nations, such as China, Russia, India, Iran and Saudi Arabia, have been pushing to reverse this course by giving the ITU or the United Nations itself, regulatory jurisdiction over Internet governance. The ITU is a treaty-based organization under the auspices of the United Nations.[1] Don't take my word for it, however. As Russian Prime Minister Vladimir Putin said almost one year ago, the goal of this well-organized and energetic effort is to establish "international control over the Internet using the monitoring and supervisory capabilities of the [ITU]."[2]

Motivations of some ITU Member states vary. Some of the arguments in support of such actions may stem from frustrations with the operations of Internet Corporation for Assigned Names and Numbers (ICANN). Any concerns regarding ICANN, however, should not be used as a pretext to end the multi-stakeholder model that has served all nations – especially the developing world – so well. Any reforms to ICANN should take place through the bottom-up multi-stakeholder process and should not arise through the WCIT's examination of the International Telecommunication Regulations (ITR)s.

Constructive reform of the ITRs may be needed. If so, the scope of any review should be limited to traditional telecommunications services and not expanded to include information services or any form of Internet services. Modification of the current multi-stakeholder Internet governance model may be necessary as well, but we should all work together to ensure no intergovernmental regulatory overlays are placed into this sphere. Not only would nations surrender some of their national sovereignty in such a pursuit, but they would suffocate their own economies as well, while politically paralyzing engineering and business decisions within a global regulatory body.

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[1] History, ITU, http://www.itu.int/en/about/Pages/history.aspx (last visited May 14, 2012).

[2] Vladimir Putin, Prime Minister of the Russian Federation, Working Day, GOV'T OF THE RUSSIAN FED'N, http://premier.gov.ru/eng/events/news/15601/ (June 15, 2011) (last visited May 14, 2012).

Every day headlines tell us about industrialized and developing nations alike that are awash in debt, facing flat growth curves, or worse, shrinking GDPs. Not only must governments, including our own, tighten their fiscal belts, but they must also spur economic expansion. An unfettered Internet offers the brightest ray of hope for growth during this dark time of economic uncertainty, not more regulation.

Indeed, we are at a crossroads for the Internet's future. One path holds great promise, while the other path is fraught with peril. The promise, of course, lies with keeping what works, namely maintaining a freedom-enhancing and open Internet while insulating it from legacy regulations. The peril lies with changes that would ultimately sweep up Internet services into decades-old ITU paradigms. If successful, these efforts would merely imprison the future in the regulatory dungeon of the past.

The future of global growth and political freedom lies with an unfettered Internet. Shortly after the Internet was privatized in 1995, a mere 16 million people were online worldwide.[3] As of early 2012, approximately 2.3 billion people were using the Net.[4] Internet connectivity quickly evolved from being a novelty in industrialized countries to becoming an essential tool for commerce – and sometimes even basic survival – in all nations, but especially in the developing world. Such explosive growth was helped, not hindered, by a deregulatory construct. Developing nations stand to gain the most from the rapid pace of deployment and adoption of Internet technologies brought forth by an Internet free from intergovernmental regulation.

By way of illustration, a McKinsey report released in January examined the Net's effect on the developing world, or "aspiring countries."[5] In 30 specific aspiring countries studied, including Malaysia, Mexico, Morocco, Nigeria, Turkey and Vietnam,[6] Internet penetration has grown 25 percent per year for the past five years, compared to only five percent per year in developed nations.[7] Obviously, broadband penetration is lower in aspiring countries than in the developed world, but that is quickly changing thanks to mobile Internet access technologies. Mobile subscriptions in developing countries have risen from 53 percent of the global market in 2005 to 73 percent in 2010.[8]

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[3] Internet Growth Statistics, INTERNET WORLD STATS, http://www.internetworldstats.com/emarketing.htm (last visited Feb. 21, 2012).

[4] *Id.*

[5] *See* McKinsey High Tech Practice, *Online and upcoming: The Internet's impact on aspiring countries*, MCKINSEY & CO. (Jan. 2012) ("*McKinsey Aspiring Countries Report*"), http://www.mckinsey.com/Client_Service/High_Tech/Latest_thinking/Impact_of_the_internet_on_aspiring_countries (last visited May 24, 2012).

[6] *Id.* at 22 (categorizing the following as aspiring countries: Algeria, Argentina, Brazil, Chile, China, Colombia, Czech Republic, Egypt, Hungary, India, Indonesia, Iran, Kazakhstan, Malaysia, Mexico, Morocco, Nigeria, Pakistan, the Philippines, Poland, Romania, the Russian Federation, Saudi Arabia, South Africa, Taiwan, Thailand, Turkey, Ukraine, Venezuela, and Vietnam).

[7] *Id.* at 1, 3-4, 23.

[8] *Id.* at 1.

In fact, Cisco estimates that the number of mobile-connected devices will exceed the world's population sometime this year.[9] Increasingly, Internet users in these countries use *only* mobile devices for their Internet access.[10] This trend has resulted in developing countries growing their global share of Internet users from 33 percent in 2005, to 52 percent in 2010, with a projected 61 percent share by 2015.[11] The 30 aspiring countries discussed earlier are home to one billion Internet users, half of all global Internet users.[12]

The effect that rapidly growing Internet connectivity is having on aspiring countries' economies is tremendous. The Net is an economic growth accelerator. It contributed an average 1.9 percent of GDP growth in aspiring countries for an estimated total of $366 billion in 2010.[13] In some developing economies, Internet connectivity has contributed up to 13 percent of GDP growth over the past five years.[14] In six aspiring countries alone, 1.9 million jobs were associated with the Internet.[15] And in other countries, the Internet creates 2.6 new jobs for each job it disrupts.[16] I expect that we would all agree that these positive trends must continue. The best path forward is the one that has served the global economy so well, that of a multi-stakeholder governed Internet.

One potential outcome that could develop if pro-regulation nations are successful in granting the ITU authority over Internet governance would be a partitioned Internet. In particular, fault lines could be drawn between countries that will choose to continue to live under the current successful model and those Member States who decide to opt out to place themselves under an intergovernmental regulatory regime. A balkanized Internet would not promote global free trade or increase living standards. At a minimum, it would create extreme uncertainty and raise costs for *all* users across the globe by rendering an engineering, operational and financial morass.

For instance, Harvard and the Massachusetts Institute of Technology (MIT) recently announced placing many of their courses online for free – for anyone to use. The uncertainty and economic and engineering chaos associated with a newly politicized

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[9] *Cisco Visual Networking Index: Global Mobile Data Traffic Forecast Update, 2011-2016*, CISCO, at 3 (Feb. 14, 2012), http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white_paper_c11-520862.pdf (last visited May 24, 2012).

[10] *McKinsey Aspiring Countries Report* at 1.

[11] *Id.* at 3-4, 23.

[12] *Id.* at iv, 4, 23. And 73 percent of Internet users do not speak English as a first language. *Id.* at iv.

[13] *Id.* at 2, 8-9, 26-27.

[14] *Id.* at 2.

[15] *Id.* at v.

[16] McKinsey Global Institute, *Internet Matters: The Nets Sweeping Impact on Growth, Jobs, and Prosperity*, MCKINSEY & CO., at 3, 21 (May 2011), http://www.mckinsey.com/Insights/MGI/Research/Technology_and_Innovation/Internet_matters (last visited May 24, 2012).

intergovernmental legal regime would inevitably drive up costs as cross border traffic and cloud computing become more complicated and vulnerable to regulatory arbitrage. Such costs are always passed on to the end user consumers and may very well negate the ability of content and application providers such as Harvard and MIT to offer first-rate educational content for free.

Nations that value freedom and prosperity should draw a line in the sand against new regulations while welcoming reform that could include a non-regulatory role for the ITU. Venturing into the uncertainty of a new regulatory quagmire will only undermine developing nations the most.

As evidenced by today's panels, attempts to regulate the Internet sphere have rallied opposition here in the U.S. and internationally on a bipartisan basis. I am grateful that my friend, Ambassador Phil Verveer, is here with me today. I am encouraged by his recent indication that the Administration will name a head of the U.S. delegation to the WCIT in June. Furthermore, my friend and colleague, FCC Chairman Genachowski, also has been working to raise awareness of this important issue as have other key members of the Obama Administration.

I am further buoyed by the leading role played by the private sector, both for-profit and non-profit, not only domestically, but abroad as well. I am pleased to report that there are many entities of all stripes, including public interest groups, telecommunications companies, content providers, think tanks, Internet access service providers, non-profit Internet governance entitites and network manufacturers standing together to help spread the message and educate policymakers across the globe. A solid diverse "coalition of coalitions" is starting to grow, which will help the soon-to-be named leader of our delegation begin on a positive note.

Finally, it is worth noting that even if this effort is unsuccessful in December, we must continue to be vigilant. Given the high profile, not to mention the dedicated efforts by some countries, I cannot imagine that this matter will disappear. Similarly, I urge skepticism for the "minor tweak" or "light touch." As we all know, *every* regulatory action has consequences. Put another way, when tended with care and patience, even a mustard seed can grow into Jack's Beanstalk. We must remain vigilant for years to come.

For your convenience, I have attached a copy of a recent *Wall Street Journal* op-ed that I wrote which provides more detail on the issue. *See* Exhibit A.

Thank you again for the opportunity to appear before you today. I look forward to your questions.

Exhibit A

Robert M. McDowell, *The UN Threat to Internet Freedom*, WALL ST. J., Feb. 21, 2012, at A19, *available at* http://online.wsj.com/article/SB10001424052970204792404577229074023195322.html.

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The U.N. Threat to Internet Freedom

By Robert M. McDowell

On Feb. 27, a diplomatic process will begin in Geneva that could result in a new treaty giving the United Nations unprecedented powers over the Internet. Dozens of countries, including Russia and China, are pushing hard to reach this goal by year's end. As Russian Prime Minister Vladimir Putin said last June, his goal and that of his allies is to establish "international control over the Internet" through the International Telecommunication Union (ITU), a treaty-based organization under U.N. auspices.

If successful, these new regulatory proposals would upend the Internet's flourishing regime, which has been in place since 1988. That year, delegates from 114 countries gathered in Australia to agree to a treaty that set the stage for dramatic liberalization of international telecommunications. This insulated the Internet from economic and technical regulation and quickly became the greatest deregulatory success story of all time.

Since the Net's inception, engineers, academics, user groups and others have convened in bottom-up nongovernmental organizations to keep it operating and thriving through what is known as a "multi-stakeholder" governance model. This consensus-driven private-sector approach has been the key to the Net's phenomenal success.

In 1995, shortly after it was privatized, only 16 million people used the Internet world-wide. By 2011, more than two billion were online—and that number is growing by as much as half a million every day. This explosive growth is the direct result of governments generally keeping their hands off the Internet sphere.

Net access, especially through mobile devices, is improving the human condition more quickly—and more fundamentally—than any other technology in history. Nowhere is this more true than in the developing world, where unfettered Internet technologies are expanding economies and raising living standards.

Farmers who live far from markets are now able to find buyers for their crops through their Internet-connected mobile devices without assuming the risks and expenses of traveling with their goods. Worried parents are able to go online to locate medicine for their sick children. And proponents of political freedom are better able to share information and organize support to break down the walls of tyranny.

The Internet has also been a net job creator. A recent McKinsey study found that for every job disrupted by Internet connectivity, 2.6 new jobs are created. It is no coincidence that these wonderful developments blossomed as the Internet migrated further away from government control.

Today, however, Russia, China and their allies within the 193 member states of the ITU want to renegotiate the 1988 treaty to expand its reach into previously unregulated areas. Reading even a partial list of proposals that could be codified into international law next December at a conference in Dubai is chilling:

- Subject cyber security and data privacy to international control;
- Allow foreign phone companies to charge fees for "international" Internet traffic, perhaps even on a "per-click" basis for certain Web destinations, with the goal of generating revenue for state-owned phone companies and government treasuries;
- Impose unprecedented economic regulations such as mandates for rates, terms and conditions for currently unregulated traffic-swapping agreements known as "peering."
- Establish for the first time ITU dominion over important functions of multi-stakeholder Internet governance entities such as the Internet Corporation for Assigned Names and Numbers, the nonprofit entity that coordinates the .com and .org Web addresses of the world;
- Subsume under intergovernmental control many functions of the Internet Engineering Task Force, the Internet Society and other multi-stakeholder groups that establish the engineering and technical standards that allow the Internet to work;
- Regulate international mobile roaming rates and practices.

Many countries in the developing world, including India and Brazil, are particularly intrigued by these ideas. Even though Internet-based technologies are improving billions of lives everywhere, some governments feel excluded and want more control.

And let's face it, strong-arm regimes are threatened by popular outcries for political freedom that are empowered by unfettered Internet connectivity. They have formed impressive coalitions, and their efforts have progressed significantly.

Merely saying "no" to any changes to the current structure of Internet governance is likely to be a losing proposition. A more successful strategy would be for proponents of Internet freedom and prosperity within every nation to encourage a dialogue among all interested parties, including governments and the ITU, to broaden the multi-stakeholder umbrella with the goal of reaching consensus to address reasonable concerns. As part of this conversation, we should underscore the tremendous benefits that the Internet has yielded for the developing world through the multi-stakeholder model.

Upending this model with a new regulatory treaty is likely to partition the Internet as some countries would inevitably choose to opt out. A balkanized Internet would be devastating to global free trade and national sovereignty. It would impair Internet growth most severely in the developing world but also globally as technologists are forced to seek bureaucratic permission to innovate and invest. This would also undermine the proliferation of new cross-border technologies, such as cloud computing.

A top-down, centralized, international regulatory overlay is antithetical to the architecture of the Net, which is a global network of networks without borders. No government, let alone an intergovernmental body, can make engineering and economic decisions in lightning-fast Internet time. Productivity, rising living standards and the spread of freedom everywhere, but especially in the developing world, would grind to a halt as engineering and business decisions become politically paralyzed within a global regulatory body.

Any attempts to expand intergovernmental powers over the Internet—no matter how incremental or seemingly innocuous—should be turned back. Modernization and reform can be constructive, but not if the end result is a new global bureaucracy that departs from the multi-stakeholder model. Enlightened nations should draw a line in the sand against new regulations while welcoming reform that could include a nonregulatory role for the ITU.

Pro-regulation forces are, thus far, much more energized and organized than those who favor the multi-stakeholder approach. Regulation proponents only need to secure a simple majority of the 193 member states to codify their radical and counterproductive agenda. Unlike the U.N. Security Council, no country can wield a veto in ITU proceedings. With this in mind, some estimate that approximately 90 countries could be supporting intergovernmental Net regulation—a mere seven short of a majority.

While precious time ticks away, the U.S. has not named a leader for the treaty negotiation. We must awake from our slumber and engage before it is too late. Not only do these developments have the potential to affect the daily lives of all Americans, they also threaten freedom and prosperity across the globe.

Mr. McDowell is a commissioner of the Federal Communications Commission.

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DOWJONES

Mr. WALDEN. We appreciate your work in this matter and your testimony today before the subcommittee.

Ambassador Verveer, in a blog post you wrote with Assistant Secretary of Commerce Lawrence Strickling and White House Deputy Chief Technology Officer Daniel Weitzner, you said the "centralized control over the Internet through a top-down government approach would put political dealmakers rather than innovators and experts in charge of the future of the Internet. This would slow the pace of innovation, hamper global economic development, and lead to an era of unprecedented control over what people can say and do online." Would you elaborate on that statement for us and then perhaps, Commissioner McDowell, you might make a comment or two as well.

Mr. VERVEER. That is right. I would be glad to, Mr. Chairman.

Basically, the anxiety that we have about top-down arrangements involves both the economic performance of the Internet if you will in terms of its dynamism, in terms of its ability to react to opportunities that technology changes present and business models present, changes in consumer behavior might present. We also are very concerned about whether or not top-down intergovernmental controls would aid in censorship or repression; that is would aid any particular country that is concerned about the content that comes into its country that crosses its borders, whether or not these kinds of changes might permit it to claim that it is entitled to the aid of other countries in terms of preventing unwanted content.

So we believe that both for reasons of economics but also for reasons of the broader political, cultural, social value of the Internet, it ought to be kept operating as it is today.

Mr. WALDEN. Mr. McDowell, any comment?

Mr. MCDOWELL. I agree. I thought, by the way, the joint blog post by the Department of Commerce, Ambassador Verveer and Danny Weitzner in the White House was excellent. I can't really improve upon his answer, but as I said in my opening remarks, it is a grave threat.

Mr. WALDEN. Commissioner, according to Communications Daily today, Gigi Sohn from Public Knowledge has said that "we have to be a little careful not to hold up multi-stakeholderism as a coin." Ultimately, the U.S. Government has to serve as a backstop to these efforts, and it is government's role to make the decisions and enforce the principles that are developed. Do you agree that it is it government's role to make the decisions about how the Internet operates and to enforce them?

Mr. MCDOWELL. I can't speak for Ms. Sohn but to answer your question directly, no, I think we need to reinforce the multi-stakeholder model in the absence of stakeholder action.

Mr. WALDEN. Ambassador Verveer?

Mr. VERVEER. Yes, I think we agree once again that we want very much to keep the multi-stakeholder model as the front and center basis on which we engage in Internet governance.

Mr. WALDEN. And it seems like, Commissioner McDowell and Ambassador, that aren't many of the proposals before WCIT attempts to regulate the Internet as if it is the old-fashioned telephone service? It certainly feels like that to some of us.

Mr. MCDOWELL. Yes, and then some perhaps with the regulation of content and applications as well, which would go well beyond the old phone service regulation of yore.

Mr. VERVEER. I guess I would add it is important to understand that the contributions that come in are things that have the kinds of implications in many instances that Commissioner McDowell mentioned in his testimony. But a lot of them are probably also motivated or principally motivated by an effort to preserve or reinstate the kinds of arrangements that existed under the days of voice-grade international telephone service. And these are possibly in many instances sincerely presented not intending anything anymore than that. For the reasons the Commissioner mentioned, these are probably also mistaken in terms of efforts to find new approaches to regulation.

Mr. WALDEN. And in fact I thought your testimony was very well done and raises some of these points just how insidious they can be and yet look as if they are not problem-creating. What do you see as the most troubling small changes if you will that have been proposed?

Mr. MCDOWELL. Well, certainly, the Arab States' proposal is very troubling. A small definitional change maybe hoping no one would notice that all of a sudden swallows the Internet but expands the ITU's jurisdiction tremendously. Again, it could be something that comes through the phone numbering issue or some other issue. I mean it seems almost every week there is a new issue or a new angle or a new front that has opened up, a new argument that is tested. So it could be any number.

Mr. WALDEN. All right. I have no further questions.

With that, I will turn over now to ranking member of the subcommittee, Ms. Eshoo, for 5 minutes.

Ms. ESHOO. Thank you, Mr. Chairman.

And Ambassador Verveer and Commissioner McDowell, thank you not only for being here but for your very strong, knowledgeable voices and advocates on this issue as well.

Ambassador Verveer, you have mentioned in your testimony that many other governments have joined with the United States in pursuing an outcome that would limit the ITU's involvement in Internet governance. Can you tell us what the extent of this collaboration is and how are these other governments working with the U.S. to achieve this goal? Because it seems to me that we have a lot of people, a lot of countries, states, nation-states that are—let me put it in a more positive way—don't share our view of the Internet and how it operates and how it should continue to operate. So how is our coalition doing and can you do a little bit of a dive on telling us where you think we are with other countries, which is so important?

And then, I would like Commissioner McDowell, maybe you can give us a WCIT 101. How many are going to vote? Is there a time frame around this? Is it discussion that begins this year and extends for the next 24 years? The last time they met was almost a quarter of a century ago. So maybe some already know; I am not so sure I understand how the ITU actually is going to work when we show up. So if you could handle that one. But let us go to Ambassador Verveer first.

Mr. VERVEER. Yes, Representative Eshoo, the principle activities to this date in terms of preparation for the conference are being undertaken in regional groupings of which there are six. Our regional grouping of the Americas involves something called CTEL. The Europeans operate under something called CEPT, and in the Asia-Pacific area, there is the Asia-Pacific Telecommunity, among other places. I think it is a fair summary that in those three regions you have a largely consistent set of views about how we should proceed. That is to say that we don't want to see the treaty conference become the occasion for any kind of intergovernmental control of the Internet.

Now, we will, in our preparations, with the leadership of our new head of delegation, Terry Kramer, we will engage in a great many bilateral discussions as well. By kind of analogy, in a recently concluded World Radio Conference, our head of delegation and our deputy head of delegation Dick Beaird engaged in about 50 bilateral discussions leading up to the conference itself. So we are very actively engaged in discussions with friends and with those who may have different opinions, and that is going to continue on right up to the conference itself.

Ms. ESHOO. Where would you say we are? Is there still a split? Is there a consensus that comes around more our view than other views on this of the regions that you just mentioned?

Mr. VERVEER. Yes, I think one way to describe the state of the activities at this point would be to think of this conference as potentially having involved two tracks. The first track would have been an effort at direct regulation of the Internet——

Ms. ESHOO. Um-hum.

Mr. VERVEER [continuing]. Something that was a source of concern a year and more ago but I think is less a source of concern now. The only really direct effort that I am aware of to accomplish that was a proposal by the Russian Federation to create an entirely new framework for the negotiation of entirely new regulations.

Ms. ESHOO. Um-hum.

Mr. VERVEER. That effort has been turned back I think successfully.

Ms. ESHOO. That is very good news. I want to get to Commissioner McDowell, thank you.

Mr. MCDOWELL. Sure. When it comes to the process, I will actually leave that to the Department of State. The Department of State actually takes the lead as a treaty negotiation. We play a supporting role——

Ms. ESHOO. So how many are on our team? Are they votes? Is it 40, 50 people?

Mr. MCDOWELL. Well, there are 193 member states of the ITU.

Ms. ESHOO. Um-hum.

Mr. MCDOWELL. They each have one vote. There is no veto power so it doesn't matter how many people live in your country; you have the same vote as the tiniest of countries. And the idea of every 24 years——

Ms. ESHOO. Sort of like the Senate.

Mr. MCDOWELL. I will stay out of the bicameral——

Ms. ESHOO. I know. I know.

Mr. MCDOWELL. But the idea of every 24 years on the one hand is accurate; on the other hand, this is actually almost an annual issue. There is some other conference, you know, that is almost every year if not several conferences per year. So the ITU has many difference conferences, for instance, the World Radio Communications Conference that the Ambassador talked about was this past January and February. But we need to look beyond this December. I want to make sure the committee and everybody listening understands that it is not just about this December. This is just the latest vignette in this drama. We have to remain vigilant for years to come. There will be more meetings, more possibilities for treaty negotiations in 2013, '14, '15, and on out.

Ms. ESHOO. Thank you.

Mr. TERRY [presiding]. Thank you. I recognize myself for questions. Mr. Upton was supposed to be next but since he is not here, I will take his time.

Mr., or is it Ambassador——

Mr. VERVEER. Either is fine.

Mr. TERRY [continuing]. Verveer, trying to get more up to speed on this. I am concerned about the Secretary-General Touré and his relationships with Russia and Vladimir Putin and then couple that relationship with Putin's comments where he is very blunt about his desires to regulate the Internet and take control of the Internet. So I ask you is that an unfounded concern or fear that I have? When the Secretary General of the ITU has this relationship, is it unfounded? Is this relationship a concern? What steps are we taking to be able to counterbalance that relationship?

Mr. VERVEER. Well, my view is that the Secretary General is in fact a very effective and honorable international civil servant elected to this position and then reelected unanimously the last go-around. So he is very well respected. He has been very effective and I don't personally have any serious misgivings about his ability to be fair, to be helpful in terms of helping to see that the conference and the ongoing activities that Commissioner McDowell mentioned take place.

He is a man who has a very strong and personal connection with the United States. He lived here for 12 years working for Intelsat.

Mr. TERRY. He has family here?

Mr. VERVEER. Two of his children are U.S. citizens and I believe resident here. And so I think he exemplifies, I believe, a very decent international civil servant in what is a very important and frankly very complicated job. He has to attend to the legitimate needs and requirements of the United States but also of the Russian Federation, of China, and every other of the 193 countries in the world. But I don't think we need to have anxieties about his integrity.

Mr. TERRY. All right. I wasn't questioning his integrity but that maybe his beliefs were close to what Prime Minister Putin has expressed. And so, Mr. McDowell, do you have any concerns or fears about the relationship——

Mr. MCDOWELL. I think what is more——

Mr. TERRY [continuing]. And whether that puts us behind the eight ball so to speak?

Mr. MCDOWELL. I will take Ambassador Verveer's analysis, of course, at face value. He is much more an expert on that than I am. But what is more important than looking at his background I think is looking at his public statements on these issues, many of which I have cited in my testimony and other things——

Mr. TERRY. Good point.

Mr. MCDOWELL [continuing]. And I think when you read them, they speak for themselves.

Mr. TERRY. Yes. And that is concerning.

I don't know, Ambassador Verveer, soon-to-be Ambassador Kramer, will you walk through your level of confidence in Mr. Kramer and what preparations he should be taking to make sure that we draw a hard line?

Mr. VERVEER. Sure. Mr. Kramer is a retired senior executive who had worked very extensively particularly in the wireless business. His career involved very significantly service initially in Pacific Telesis which then spun off its wireless business into a company called AirTouch, which eventually was acquired by Vodafone. Mr. Kramer, during almost all of this time, then, followed the progression of the company and the assets as they were sold. He spent a good many years of his career as a senior executive for Vodafone. He spent about 5 years, as I understand it, in the United Kingdom and in the Netherlands involved in Vodafone's extensive international activities. He has been a member of the Executive Committee of the GSM Association, which is the largest international wireless association, has spent some time since his retirement teaching at Harvard at the Harvard Business School, and he is about to undertake, I believe, teaching assignments at UCLA at the business school there.

He is a man of very considerable experience, then, in the international communications arena. I think it will prove to be something that is very, very valuable from our point of view. There will be a learning curve. We are embarking now in terms of helping him with that——

Mr. TERRY. My time is expired but I am worried about or concerned about whether the learning curve that we in the few months before December conference—and I will let somebody else ask that question.

So at this time I recognize Mr. Markey.

Mr. MARKEY. I thank the gentleman. Back in January, Sir Tim Berners-Lee, the inventor of the World Wide Web, urged us to "make sure the Web itself is a blank sheet, the blank canvas, something that does not constrain the innovation that is around the corner." The wonderful thing about the Internet, Sir Tim also reminded us, is that no one needs to ask permission to innovate, to get their voice heard, to launch a new service or a new business enterprise. That is the magic of the Internet. The Internet is the most level playing field for commercial opportunity ever invented. It is the most successful communication and commercial medium in history. It is the lifeblood of the world economy.

Now, last week, Vint Cerf, who is going to testify on the second panel and was hired by Bolt Beranek and Newman along with several others, back in the late 1960s, to develop packets which network that eventually became known as the Internet, he wrote just

last Thursday in the New York Times, "the decisions taken in Dubai in December have the potential to put government handcuffs on the net." To prevent that and keep the Internet open and free for the next generation, we need to prevent a fundamental shift in how the Internet is governed.

Do you think that can happen in Dubai, Ambassador Verveer?

Mr. VERVEER. I think it could happen but I think it is very unlikely to happen. And one of the reasons it is very unlikely to happen is many of the countries of the world are very alert to the kinds of concerns that Sir Tim mentioned in the hearing in 2007. The Internet is enormously valuable to everyone in the world and I think it is a fair surmise that almost all of the countries of the world are going to be very anxious not to do anything that might damage it. And, of course, that is a large part of the effort we have been and will continue to make is to point out that there are things that could damage it.

Mr. MARKEY. What is the motivation in your opinion behind what China or Russia might seek to accomplish if they were successful in what they had been proposing?

Mr. VERVEER. Both of those countries have a concept that they call information security. And their concept of information security is both what we would call cybersecurity—that is a physical protection of their networks—but it goes beyond that to address content that they regard as unwanted. And I think as much as anything else, at the base, the motivations that Russia and China have involve regime stability and regime preservation which for them involves preventing unwanted content from being made widely available in their country.

Mr. MARKEY. And Commissioner McDowell, how do you view this threat from China and Russia and others that seek to retain regime stability and can only really pursue it through an international control of the Internet?

Mr. MCDOWELL. For those countries that are offering such ideas that are authoritarian like the ones you cite, I don't think it is too stark to say their vision of the Internet is to have a tyrannical walled garden. But I think there are a variety of motivations throughout the 193 member states who might find a number of things appealing. It might be purely economic, state-owned, telephone companies charging web destinations on a per-click basis, things of that nature that might be an economic incentive. But for the Chinas and Russias and other authoritarian regimes——

Mr. MARKEY. Um-hum.

Mr. MCDOWELL [continuing]. I think it is to snuff out political dissent.

Mr. MARKEY. We actually had to have a hearing here in 1987 when the Federal Communications Commission was actually considering a proposal that would have per-minute charges up on the corner of the screen on the Internet rather than an all-you-can-eat kind of proposal, which we are glad we beat that back back in 1987 so that we could have this chaotic, uncontrollable system that ultimately developed.

So Mr. Ambassador, are you gratified by the response you are receiving from other countries in their alignment with the United States in resisting these proposals coming from totalitarian states?

Mr. VERVEER. Well, by and large, we are gratified by the responses that we have seen. We find that a significant number of our allies have been prepared to step up to also oppose what we regard as fundamentally bad ideas. And I am very confident that as we have the opportunity over the next 6 months to continue these discussions that we are likely to end up with what we all find to be adequate——

Mr. MARKEY. Are these countries joining us because of pressure from the United States or because they agree with us that the Internet should retain this chaotic nature?

Mr. VERVEER. Well, I think in very many instances they do agree with us, that they see the value of the Internet as a mechanism for economic and broader improvements.

Mr. MARKEY. Do you want to list the few countries that agree with us?

Mr. VERVEER. Surely. We find that we get a good deal of support from Japan in terms of activities in the Asia-Pacific Telecommunity. We find that we are getting a good deal of support from not only Canada and Mexico but other countries in our hemisphere in terms of some proposals that we make. Many of the European countries are very well aligned with us in terms of the issues and values that we think are most important in terms of preserving. So we see, I think, very substantial support for the kind of broad views that we have about the Internet, which is again not to say that this is fully resolved. There is a great deal more work that needs to be done both in connection with this conference and then probably into the indefinite future.

Mr. MARKEY. OK. Congratulations to the Obama administration on their excellent work on this.

Mr. TERRY. Mr. Stearns, you are recognized for 5 minutes.

Mr. STEARNS. Thank you, Mr. Chairman.

Mr. Ambassador, with these 193 countries meeting in Dubai, Mr. Markey touched upon and the question was how many support us? How many votes are we short on having the majority to support our position exactly?

Mr. VERVEER. Well, I don't think we have a count. It is very important to understand——

Mr. STEARNS. You don't have a count on it? You don't know?

Mr. VERVEER. We don't have——

Mr. STEARNS. We have a whip here that really knows before any votes are taken what is happening. You know, I get a little concerned that you don't even know. I understand that we are about nine votes short but you think that is an accurate representation?

Mr. VERVEER. No. I don't——

Mr. STEARNS. Is it more?

Mr. VERVEER. If I could explain?

Mr. STEARNS. Sure. Sure.

Mr. VERVEER. The conference will follow the ITU traditions which involve avoiding votes. The conference will operate on the basis of a——

Mr. STEARNS. So there will never be a vote? If you don't mind, I would like you to answer yes or no if possible just because I don't have a lot of time. Will there be a vote in Dubai on this by these 193 countries? Yes or no?

Mr. VERVEER. I think it is very unlikely.

Mr. STEARNS. So there will be no vote. So we don't have to worry about who is for us and who is against us?

Mr. VERVEER. We do have to worry about that because the——

Mr. STEARNS. OK.

Mr. VERVEER. First, it is important to understand there are going to be many different contributions that are going to be discussed——

Mr. STEARNS. I understand. Do they work on the basis of a consensus? In other words, they have this sort of silent consensus and they move forward without a vote? Is that what happens?

Mr. VERVEER. That is in fact what happens.

Mr. STEARNS. So there will be a vote but it will be a vote sort of secretly through a consensus, and based upon that, a report will be written and that report will be issued and that will be the hard fall answer to the Dubai conference. Would that be a fair estimation what is going to happen?

Mr. VERVEER. Yes. What will happen is there will be negotiations over individual proposals in terms of the international telecommunications regulations. Those negotiations will yield presumably some agreement on words and phrases in terms of the regulations——

Mr. STEARNS. I understand.

Mr. VERVEER [continuing]. Or agreement not to change them.

Mr. STEARNS. OK, just so we as legislators have an understanding, can you give me today how many votes we are short of a consensus?

Mr. VERVEER. I cannot tell you——

Mr. STEARNS. Ten votes short, 100 votes short? I mean can't you just give me a broad brush?

Mr. VERVEER. I am sorry to say——

Mr. STEARNS. OK.

Mr. VERVEER [continuing]. I think it is impossible to answer that——

Mr. STEARNS. Mr. McDowell——

Mr. VERVEER [continuing]. Question.

Mr. STEARNS [continuing]. Any comments you want to say on this? In fact, you might suggest what as a legislator I and my fellow colleagues could do here based upon this evolving consensus where it appears we are nine votes short?

Mr. MCDOWELL. Well, actually, I think also going back to the dialogue with Congressman Markey, it is important that this not be an issue of the United States versus——

Mr. STEARNS. I agree.

Mr. MCDOWELL [continuing]. The rest of the world.

Mr. STEARNS. I agree.

Mr. MCDOWELL. I think we need to cultivate allies in the developing world. They have the most to gain from an unfettered Internet and the most to lose if this goes forward. So that is where I think we need to be whipping up the votes, to use your term.

Mr. STEARNS. OK. Is there anything that the FCC is doing right now that would impact this ITU?

Mr. MCDOWELL. Yes, we have an International Bureau that works on this and works closely with the State Department——

Mr. STEARNS. OK.

Mr. MCDOWELL [continuing]. And they are busy working with member states throughout the world.

Mr. STEARNS. Commissioner McDowell, you mentioned in your extended testimony the potential outcome of a balkanized Internet if pro-regulation nations are successful in December. Could you perhaps expand on this? And what would be the consequences for the United States and other countries?

Mr. MCDOWELL. I am sure whether it is December or sometime in the future. And I, by the way, would like to suggest to the committee that maybe we do a post-WCIT hearing at some point maybe early next year to see how things went and what is going to happen in the future.

But what I mean by a balkanized Internet would be are there going to be countries that would opt out of the current multi-stakeholder model and choose this top-down regulatory regime, in which case, you know, the Internet is a network of networks without borders and it would really create an engineering morass. At a minimum this would create chaos and confusion and economic uncertainty. That always leads to increased costs. Increased costs are always passed on to end-user consumers. So that is at a minimum. So at a maximum we would see a wilting of the proliferation of political freedom and prosperity abroad, and we would also I think see innovation be snuffed out in the cradle and we will never know what innovations might not have come to fruition.

The great thing about the Internet is just, you know, access to a computer and an Internet connection in order to create the next great idea, whether that is the next Facebook. But that could come from the developing world.

Mr. STEARNS. Mr. Ambassador, besides Russia and China, what are the other top three or four countries that want to put this under the U.N. auspices?

Mr. VERVEER. Well, we see substantial efforts on the part of Iran to do that.

Mr. STEARNS. OK.

Mr. VERVEER. There are certain Arab States that——

Mr. STEARNS. Can you name the Arab States?

Mr. VERVEER. Pardon me?

Mr. STEARNS. Can you name the Arab States?

Mr. VERVEER. Well——

Mr. STEARNS. Egypt?

Mr. VERVEER. Egypt has certainly taken some——

Mr. STEARNS. Position?

Mr. VERVEER. But not complete steps in that direction. There have been efforts as well——

Mr. STEARNS. Tunisia?

Mr. VERVEER. I don't believe I would put Tunisia in——

Mr. STEARNS. Saudi Arabia?

Mr. VERVEER [continuing]. That category. Saudi Arabia, again, as with Egypt, has from time to time taken steps or taken positions that——

Mr. STEARNS. Would it be fair to say that most of the mid-East countries other than Israel is supporting this? Is that a fair statement?

Mr. VERVEER. We see support after a fashion I suppose from some of the Arab States, yes, but I think the thing that is critically important to understand is that in terms of genuinely hard-line opponents to the arrangements as we see them today, that they tend to be states that we have already mentioned. That otherwise there are subtleties and nuances that are substantial in terms of——

Mr. STEARNS. Got you. All right. My time is expired. I thank you, Mr. Chairman.

It is just an odd coincidence or ironic that with the Arab Spring that a lot of these countries seem to want to put it into a monopoly type of U.N. operation. Thank you.

Mr. TERRY. Thank you, Mr. Stearns.

The gentlelady from California, Ms. Matsui, is recognized for 5 minutes.

Ms. MATSUI. Thank you, Mr. Chairman.

Ambassador Verveer, I want to talk more about the WCIT. You mentioned that the ITRs have not been revised since 1988, which is about 25 years ago and a lot has happened in 25 years. The comparison is even worse than the Tortoise and the Hare. It is more like we are at warp speed right now. And why did the ITU decide to reexamine the ITRs now? And do you anticipate that they will want to examine them again shortly? I mean is there a schedule to do this?

Mr. VERVEER. First, I think it is important to understand that there has been pressure to reexamine the ITRs that has existed for many, many years. The United States has taken the view over the years that it wasn't really necessary to do this, but finally, in 2006, an overall decision was made that it would happen this year. The idea behind that I think more than any other is something that has been made plain at this hearing, which is that the world has changed so dramatically that it seemed like it was time to review the ITRs. Now, that said, the ITRs themselves, which are only nine pages long, in fact do have a great many things that continue to be of value that could and should be preserved.

There is no schedule beyond this upcoming conference to revisit the ITRs on any regular basis. There have been some contributions or proposals that suggest that that might be valuable, but I think generally—again, this is not something that has achieved a great deal of momentum.

Ms. MATSUI. Well, once discussion begins as it has and the countries, because of recent history, have become involved in the Internet and seen the positives as well as the negatives as far as some of the countries that really look towards censorship, isn't it possible this will be a continuing process and we should be on alert now that this collaboration must continue because, as we know, technology just keeps rapidly expanding and we are not sure exactly what the next big thing is.

So is there an opportunity—and I suppose it is a multi-stakeholder process—to open it up more, this ITU process, to more stakeholders, to nongovernmental stakeholders, which I believe that Dr. Cerf has spoken about? Do you agree on that and how can the U.S. Government advocate for greater transparency in this process since that to me is sort of a stumbling block for some of the other countries?

Mr. VERVEER. Well, it is certainly true, I think, that there has been criticism—and I think it is legitimate criticism—about the ability of the nonmembers of the ITU to be aware of the deliberations, be aware of what is taking place in terms of preparation for this conference and more broadly. We are prepared through the ITU Council and good efforts of Dick Beaird, who has been our representative on the Council for many, many years, to propose to the Council that its report, which is going to be a very important document in the scheme of things, that its report in preparation for the WCIT be generally available. It would be very useful if we can find more ways—this is a point the United States often makes—to have more of the ITU's documents more widely available to all of the interested stakeholders.

Ms. MATSUI. I would think—and this is a question for both Ambassador Verveer and Commissioner McDowell—that there should be more opening of the process for increase of knowledge here even in the United States as to the importance of this. We in this country tend to take the Internet for granted and, you know, we see what has happened with the Arab Spring and realize how it has affected other countries.

I think that to a great degree we forget that what would happen if, let us say, the worst happened, this scenario, and that things would close down. I am curious what would happen if the worst happened here? What would happen here in this country? Would those resolutions immediately become law? What steps can the U.S. take to limit its participation in the treaty? You know, I kind of want to know what would happen. And either of you can answer that and both of you in fact.

Mr. VERVEER. This is a very important point that you have raised and I am glad you have. First, it is conventional and assured we will take a very broad reservation from whatever is agreed at the conference. And virtually every other country will do the same thing. So you will have countries agreeing that they will abide by the provisions of the treaty unless for some reason they won't. And as I said, typically, the reasons will be extraordinarily broad. That is one thing.

The second thing it is very important to understand is there is no enforcement mechanism associated with this. These are precatory as many, many other aspects of international law are so that it is not reasonable to assume that if something really ruinous for some reason came and was to be adopted as a particular regulation that you would see countries against their interest enforcing that regulation as only the countries would be able to enforce. There is no other way for it to be done.

So this conference and all these activities are extraordinarily important in terms of establishing norms, in terms of establishing expectations, in terms of trying to help with respect to both the commercial activities and the free flow of information. But they are very, very different from a law that the Congress, for example, might adopt that would be subject to all the juridical enforcement mechanisms that are available.

Ms. MATSUI. I am running out of time, but Commissioner McDowell, do you have any comments? Can you add to this?

Mr. MCDOWELL. I don't think I could say it any better than he could in the observance of time so——

Ms. MATSUI. OK. Thank you very much, both of you.

Mr. TERRY. The other gentlelady from Southern California, Mary Bono Mack.

Mrs. BONO MACK. Thank you.

Thank you both for your testimony. You certainly didn't mince words. There is no doubt that you feel strongly. And what I like is that I agree with everything you have said. It is hard to question witnesses when you are just trying to make them agree with you more than they already do, but I will do my best and just try to get out of you a little bit of explanation. I think as Ms. Matsui was just saying, a bigger explanation for the American people what is at stake here, I started talking about this well over a year ago and people have sort of viewed me as having a tinfoil hat on my head and was creating an issue that wasn't very real. But if you could talk a little bit about we clearly understand the Arab Spring and what this means and that the Internet is the biggest tool for freedom around the world that mankind has ever seen. So taking that aside instead can you talk a little bit about the proposal, how it would impact U.S. business and what it means for the bottom line for business should this occur? To both of you.

Mr. MCDOWELL. Sure. And thank you, Congresswoman, for your leadership on this issue. In the early days there were a lot of folks who questioned whether or not this was real and I am glad you stuck your neck out and thank you for your leadership.

At a minimum, it creates uncertainty and drives up costs and that alone can be damaging. Let us take an example. So Harvard and MIT recently announced they are going to offer courses online for free. The concept of free content or applications on the net could be put at risk if costs are raised. Ultimately, consumers pay for those costs one way or the other. They always pay for increased costs due to regulation. So, you know, at a maximum, then, you would have some sort of bifurcated Internet, cross-border technology such as cloud computing, which is becoming essential to creating efficiencies and bringing more value to consumers and raising living standards ultimately. That could be jeopardized as it becomes harder to figure out how do you engineer these technologies across borders when in the past the Internet didn't have to worry about that as much. So that gives you a flavor.

Mrs. BONO MACK. Thank you.

Ambassador, do you——

Mr. VERVEER. Well, I certainly would agree with the commissioner on that I think it is perfectly fair to observe that the free flow of information, including the free flow of commercial information, is something that has added—as the studies have been cited this morning—indicate has added measurably to the world's wealth. So we are very anxious that there not be anything that would inhibit that.

There have, for example, been some suggestions made by some countries that we ought to have a kind of per-click charge if you will that content providers ought to contribute to the cost of transmission companies for concluding traffic. There are a variety of reasons why that seems to us not to be a good idea at all, but you can

see what could turn out to be marginal imposition on the Internet would in fact interfere with the commercial value of it and we are very anxious to avoid that.

Mrs. BONO MACK. Thank you, Ambassador. And would you speak a little bit—in your testimony you mentioned that there are proposals under consideration at WCIT that would allow governments to restrict content and monitor Internet users. Can you speak a little bit about how the U.S. is working now to prevent countries from already censoring the Internet?

Mr. VERVEER. Well, we are very anxious, as you might imagine, to overcome any suggestions that there ought to be content-related restrictions. With the suggestions of this kind come, again, as Commissioner McDowell indicated in his testimony, not just or not even especially in the context of WCIT but in other forums as well, and they tend to come from countries that have—I suppose it is easy to say non-democratic traditions. And as a result, on the one hand, we are dealing with what are almost certainly sincere beliefs on the part of the political elites that stability is very important, that there are in fact objectionable—either from a political perspective or other cultural perspectives—there is such a thing as material so objectionable it ought to be excluded. That said, we obviously disagree with that and we particularly disagree with it when we are talking about what we might describe as political speech. But this set of issues arises more extensively in, for example, the kind of suggestion that Russia, China, Uzbekistan, and Tajikistan had made in the context of the United Nations.

Mrs. BONO MACK. I thank you. And my time is up. Again, I just want to thank you both very much for your hard work on this issue and for being here today.

I yield back.

Mr. TERRY. Thank you, Mary, and I want to thank you for your good effort on your resolution, that bipartisan——

Mrs. BONO MACK. I look good in a tinfoil hat.

Mr. TERRY. Well, this time it was legitimate and necessary and I am proud of the work that you have done with Henry Waxman and Ms. Eshoo to make it a bipartisan. We are all in agreement on this one.

Mr. Dingell?

Mr. DINGELL. Thank you, Mr. Chairman. I appreciate your courtesy.

First, I would like to welcome my old friend, Ambassador Verveer, who is a friend and resource to this committee. He was bureau chief of the three bureaus at the FCC back in the '70s and served the Department of Justice before that. Mr. Ambassador, welcome, and I look forward to our exchange.

And, of course, Commissioner McDowell, we appreciate your service and thank you for being here this morning. Your wise counsel has been helpful to me on many occasions.

Now, to both witnesses, this is a yes-or-no answer. Is it true that some members of the ITU may propose revisions in the ITRs that set out prescriptive and international regulations for issues such as Internet privacy and cybersecurity? Yes or no?

Mr. VERVEER. The answer is yes.

Mr. MCDOWELL. Yes.

Mr. DINGELL. To both witnesses, do you believe that it is wise for the United States to concede to international standards on Internet matters not settled definitively? That is privacy and cybersecurity by the Congress? Yes or no?

Mr. VERVEER. It is unwise for us to get too far in front of the overall consensus.

Mr. DINGELL. You find that to be a bit rushing things, is that right?

Mr. VERVEER. I now can't recall if this should be a yes or a no but it would be a bad idea.

Mr. DINGELL. I don't like to do that but we have a lot of ground to cover.

Commissioner?

Mr. MCDOWELL. Unwise.

Mr. DINGELL. Now, again, to both of our witnesses, I understand that some of the countries like Russia and China believe that "policy authority for Internet-related public issues is the sovereign rights of States and not multi-stakeholders." Is that correct? Yes or no?

Mr. VERVEER. Yes, that's correct.

Mr. DINGELL. Commissioner?

Mr. MCDOWELL. That is their position? Is that the question?

Mr. DINGELL. Yes, is that their position?

Mr. MCDOWELL. Because I understand their position, yes.

Mr. DINGELL. Do you agree with that position?

Mr. VERVEER. No, we don't.

Mr. MCDOWELL. No.

Mr. DINGELL. Now, in your collective opinion is it wise to maintain international multi-stakeholder regulatory process that more closely resembles the Administrative Procedure Act model that we use in the United States as opposed to what China and Russia propose? Yes or no?

Mr. VERVEER. Yes.

Mr. DINGELL. Commissioner?

Mr. MCDOWELL. If I understand the question correctly, I would not want a legal paradigm put in place of the multi-stakeholder model. So there are some words in there which I am not sure I understand completely so I want to make that point clear.

Mr. DINGELL. Thank you, gentlemen. It looks like we are in agreement, then, on these matters.

Now, since you are both here I would like to ask you about an unrelated matter. I know you are both aware that the President has signed legislation that permits the FCC to conduct an incentive auction in which television broadcasters can elect to return their licenses in return for a portion of the auction revenues. That legislation includes the amendment offered by Mr. Bilbray and I directing the FCC to coordinate with Canadian and Mexican authorities so that consumers and particularly those in border regions won't lose access to television signals when the incentive auction is over. Now, Mr. Ambassador, would you please bring the subcommittee up to speed on where things stand with Canada and Mexico with respect to this very important matter, particularly so to my constituents, particularly as there are no additional frequencies available for displaced stations in my hometown of Detroit if the tele-

vision ban is repacked? I have to ask you to be brief on this and perhaps maybe you would want to submit some additional comments to the record. Mr. Ambassador?

Mr. VERVEER. Well, Mr. Dingell, there are treaty obligations that we have with Canada that are designed to protect the broadcasters on both sides of the border. This is a problem not just in the area of Detroit but also in New York State in addition——

Mr. DINGELL. Also in Washington, Montana, along the borders of Minnesota and Oregon and other places, too.

Mr. VERVEER. And likewise on the Mexican border. These are things that have to be worked out and have to be worked out by agreement between the two countries. But in addition, as you mention, there is a legislative mandate that no one be disadvantaged if they choose to continue to broadcast. So this is going to be a complicated engineering matter. It may or may not be something that will permit any particular changes in the status of all the border regions, but both the treaty and the statutory obligations obviously will be observed.

Mr. DINGELL. Now, Commissioner McDowell, you are working on this at the Commission I know. Can you assure me of the Commission's commitment to full transparency on this matter? Yes or no?

Mr. MCDOWELL. Yes, from my office. I can't speak for the chairman or the other commissioner.

Mr. DINGELL. I am comfortable that you would engage in full transparency. I am a little less comfortable about some of the other folks down at the Commission. I recognize, Commissioner, that you speak for yourself. Are you comfortable that everybody else at the Commission shares your goodwill on this matter?

Mr. MCDOWELL. I certainly hope so, sir.

Mr. DINGELL. I do, too. I am a little bit like the fellow that was walking down the street and ask him, are you an optimist or a pessimist? And he said, I am an optimist. And then he said, well, why are you frowning? He said, because I am not sure my optimism is justified.

Thank you, Mr. Chairman.

Mr. TERRY. Nice one. All right. Thank you, Mr. Dingell.

And now we recognize the gentlelady from Tennessee for 5 minutes.

Mrs. BLACKBURN. Thank you, Mr. Chairman.

And again, I thank you all for being here.

Mr. Ambassador, a couple of questions for you. When was the last time that the State Department published a notice of an official meeting to prepare for the WCIT '12?

Mr. VERVEER. You know, I am not sure when we did. We understand that we have an obligation to publish notices in connection with what we call our ITAC meetings so that——

Mrs. BLACKBURN. OK.

Mr. VERVEER [continuing]. Anyone——

Mrs. BLACKBURN. Well, let me help you out with that a little bit because the last notice that I could find was January 11. That was the last public notice. But from what I have been able to find out is that the State Department is holding regular meetings of interested stakeholders on a regular basis and you have done this all year long to prepare for the conference. Isn't that correct?

Mr. VERVEER. That is correct.

Mrs. BLACKBURN. OK. And is your staff holding regular conference calls and managing a LISTSERV for stakeholders to circulate position papers and ideas to inform the U.S. delegation in advance of the WCIT '12 preparatory meetings?

Mr. VERVEER. Yes, that is also correct.

Mrs. BLACKBURN. That is correct? OK. So first of all, how do you get on the LISTSERV so that you are aware of what is going on? And then secondly, how can my constituents that are not just the largest and the wealthiest companies on the Internet or the intellectual elites participate in the process if there is no way for them to know how to participate in that process or when the meetings are going to take place or how to get involved? How do we advise them on this?

Mr. VERVEER. Well, first, you are obviously raising a very legitimate, very important question. The notices that were made—and my recollection of the advice we got from the lawyers at the State Department was that we could provide a kind of general notice as a legal matter for these regular meetings. It is very easy to get on the LISTSERV but you have to know who to contact. And if that is something that is obscure from the standpoint of the public record, we will correct that. But anyone who wishes to be on the LISTSERV certainly can——

Mrs. BLACKBURN. Well, I would like to make certain that we take care of this because this was going to be the most transparent administration in history and here we get to an issue that is very important to a lot of my constituents and they feel blocked out of this process.

Commissioner McDowell, I appreciate that you have been an outspoken critic of WCIT '12 and appreciate your efforts. Let me ask you this: you have been to Nashville, we have done a town hall there in Nashville, you know that I have got a lot of constituents that want to participate in this process, and you know that they are very concerned about what international control of the Internet would do to them and do to their livelihoods. So, you know, how do we go about this if the FCC doesn't have an open docket for comments? Don't you think that that would be a good idea to have an open docket that these individuals, these small business operators would be invited into for comment? And, you know, I know that at one point there was one but there doesn't seem to be now. So I think early 2010 there was an open docket. So tell me how we go about fixing this?

Mr. MCDOWELL. The best vehicle for that would be something called a Notice of Inquiry that the FCC could open up on——

Mrs. BLACKBURN. OK.

Mr. MCDOWELL [continuing]. What the FCC should be doing in support of the State Department's taking the lead on WCIT '12.

Mrs. BLACKBURN. OK. That sounds good. And let me ask you this: you know, one of the things as I looked at this issue with the docket, one of the things that concerns me is if the FCC still does have an open proceeding to reclassify the Internet services of Title II, telecom service. And so tell me this: how is that open proceeding different from the proposals in front of the ITU? And shouldn't we close that docket immediately?

Mr. MCDOWELL. Yes, we should. I have been very public about that for many years, as well as the original net neutrality proceeding, I think it sends the wrong signal internationally and I think it should be closed as soon as possible.

Mrs. BLACKBURN. OK. Thank you for that.

Mr. MCDOWELL. Thank you.

Mrs. BLACKBURN. My time is expired and I thank you for the time and the questions.

Mr. TERRY. Thank you.

Gentlelady from the Virgin Islands.

Mrs. CHRISTENSEN. Thank you, Mr. Chairman.

And I, too, want to welcome both the commissioner and the ambassador and thank you for your testimonies. And it is really great to have such bipartisan support on this important issue. So I want to thank the chairman and ranking member for having this hearing as we approach the WCIT.

I am not sure that all the questions that needed to be asked have not been asked, but as my colleague usually says, not everyone has asked them. But some have suggested that there is need for greater transparency and accountability in the IT process. Do you agree? And if you do think that there is a need for greater transparency, can it be accomplished without regulation that hampers the free and open access to the Internet?

Mr. VERVEER. Well, if I understood your question correctly about the desirability of greater transparency, generally in the ITU process, the answer I think from our point of view is, yes, that would be desirable. And we have recommended various measures along those lines over the years and have seen some of them come to fruition, some not. There are steps that we can and we do take here in the U.S. to try to aid non-ITU members to understand what is going on there in terms of making materials available that are available to us as a member of the ITU. And as I mentioned earlier, we are proposing in the specific instance of WCIT that the Council report, which will be the critical document or one of the most critical documents going forward, should be made public once it is in fact issued following council working group session in the next several weeks.

Mrs. CHRISTENSEN. Commissioner, do you have anything to add or——

Mr. MCDOWELL. I have nothing further to add other than to say I have heard time and time again from civil society, think tanks, efficacy groups, and such that they are very concerned about the opaque nature of the ITU. The ITU generates revenue from having civil society groups, non-member voting states join the ITU for I think about $35,000 or the equivalent thereof and that is a way of generating money for the ITU and then you can get certain documents. I have found it difficult actually even for my office to get some ITU documents. You kind of have to know somebody and I am part of the U.S. Government the last time I checked. So I do think this is something the ITU needs to work on and I have every faith in Ambassador Verveer and the incoming ambassador for the WCIT to address that issue.

Mrs. CHRISTENSEN. I guess as a follow-up to what you just said, there are also some recommendations that are brought up I think

in some of the testimony from the second panel that the ITU should have some nongovernmental voting members. Is that something that you would agree should happen? And if not, there must be a way for them to have some significant way of participating in the discussion.

Mr. VERVEER. Well, the ITU follows the general U.N. model of having nation-states as the voting members. This is essentially the architecture that the Greatest Generation worked out for us. And there are opportunities to try to find greater roles for non-nation-state participants. There are other forms of membership in the ITU that are nonvoting that permit a good deal of participation. But in fact I think a legitimate objective to find better ways to make the ITU's work—and this is also true of many of the other U.N. organizations—more available, more accessible, and more participatory in terms of non-nation states who may be involved may be interested.

Mrs. CHRISTENSEN. And, Commissioner, you talk about the light touch, a proposal, but it is possible to have any kind of a light touch regulatory regime without threatening into that freedom? I mean that is not possible.

Mr. MCDOWELL. No.

Mrs. CHRISTENSEN. That is just another way of getting into a slippery slope, isn't it?

Mr. MCDOWELL. It is a sales pitch for a much bigger problem. There is no way to have both.

Mrs. CHRISTENSEN. Thank you.

I yield back the balance.

Mr. WALDEN. The gentlelady yields back the balance of her time.

The chair now recognizes the gentleman from California, Mr. Bilbray, for 5.

Mr. BILBRAY. Gentlemen, just a general question. I am sure somebody else has already asked it but, you know, as we say that everything has been said, just not everybody said it.

What can Congress do to help with the negotiations with other countries to ensure a strong position that the Internet remain free and open without the harmful international regulations stifling it? What can we do in Congress to help with the effort? And what must we do?

Mr. VERVEER. I think the resolution that was adopted or was promulgated in the last day or two is one very important possibility and it is one that where the more adherence it has here, the better, the clearer it becomes that the United States is completely unified on this particular set of issues.

Secondly, I think this hearing itself is something that is very valuable because it provides a very plain demonstration that we in the United States are unified across our political lines. And that I think is an important message for the world, and I can assure you, the world does pay very close attention to what we do in these areas.

We will hope to have an opportunity toward the end of this month to introduce our new head of delegation to members and staff who are interested in speaking with him. We will at that time I think be able to also provide sort of a sense of some of what we think are the needs that we have in terms of going forward, preparing for the conference and participating in the conference.

Mr. MCDOWELL. I would agree with everything the ambassador said. I think Congress could help by helping us clarify our position that not even the smallest change should be allowed but also following up on the WCIT and having another sort of checkup hearing maybe after the 1st of the year because there will be many more similar circumstances coming forward in the years to come.

Mr. BILBRAY. You know, I personally spent a lot of time in Latin America working on certain problems they have down there and one of the great opportunities we see not just in Latin America but around the world and Third World countries is being able to use the Internet to help bridge the gap between those in the rural area can't go to secondary school, get the education. A lot of the things we take for granted rural people don't have access to. And it is absolutely essential that the Internet is available and that broadband is available to bridge that education gap in Third World countries.

A question is some of these countries are looking at the International Telecommunication Union as part of the solution on that. How should we respond to their legitimate concerns and how do we coordinate to make sure that that moves forward? Because this probably does more to help Third World countries in long-term economic and social progress than a lot of other stuff that we have spent trillions of dollars on.

Mr. VERVEER. The ITU has a development sector. We participate in it quite extensively and we think it is very valuable in terms of collecting and disseminating best practices in terms of capacity building, things of that nature. It also has RegionalConnect, a particular region and the Connect America's Regional Conference will occur in Panama in the middle of July. It is one that the U.S. will certainly participate in and it is again designed to try to address the kinds of issues that you have described. So it is a very valuable instrument in terms of accumulating and then disseminating important information about the kinds of broad social issues that you have just addressed.

Mr. MCDOWELL. I think the best hope actually is the growth of wireless. Wireless Internet access has been explosive. The growth there has been tremendous and that is primarily because governments have stayed out of the way, as in this country as well. So I think we need to let the market work and encourage other countries to try to get out of the way as much as possible because the mobile Internet is really the future for improving the human condition overall.

Mr. BILBRAY. Well, and I think as much as they can learn from maybe our approaches at distance learning, Mr. Chairman, maybe we ought to be looking at the great successes that are being developed in places like Panama and Latin America where the private sector is building actually the infrastructure in a telecommunication way that actually surpasses even activity of countries like Costa Rica that has had hard-line technology for so long and the great opportunities that is providing for the education of people in Third World countries.

So I yield back, Mr. Chairman. I appreciate the time.

Mr. WALDEN. The gentleman yields back his time. The chair now recognizes the gentleman from New Hampshire, Mr. Bass.

Mr. BASS. Thank you very much, Mr. Chairman.

And again a lot of the issues and questions that I have have already been addressed by other members of the committee and I would say that this has been very helpful and informative. Both Ambassador Verveer and Commissioner McDowell have enlightened us as to exactly how this process works and what the consequences are should there be an implementation of at least a partial top-down regulatory structure for the Internet if you will. And your comments, Commissioner McDowell, about an engineering morass and economic uncertainty and I guess a sort of dark and dismal specter for economic freedom over the Internet is very apt. And hopefully the many other nations, as others have said, especially Third World nations, understand the consequences of this given the fact that the structure of this deliberate body is relatively democratic and these Third World nations have quite a bit of power.

Commissioner McDowell, you published an op-ed recently in the Wall Street Journal in which you mentioned the Internet has helped farmers find buyers for crops. I can give you many examples of small industries in my neck of the woods in New Hampshire that have created whole new economies that didn't exist before by using the Internet. And I am wondering if you can speak a little bit about how the multi-stakeholder model helps small businesses and how the international regulations, if they went into effect, would hinder them.

Mr. MCDOWELL. Well, as many people have said already, it allows innovation without permission, so when you combine the liberty that comes with mobility, when you combine the invention of mobility for Marty Cooper, with the invention from Vint Cerf and Bob Kahn of packet switching and the power of the Internet, you really fundamentally change the human condition I think more so than any other invention that I can think of, maybe since fire. And I am trying not to be hyperbolic.

So you are not just contacting a place or a thing; you are able to communicate with a person and that does more to empower the sovereignty of the individual than any other technology that I can think of. So you do have farmers who can find buyers for their crops without having to take on the risks of traveling to the village, to the market where they could lose their crops or they could be stolen or the buyer might not show up so they can take care of that transaction. Worried parents can find medicine for their sick children. They can locate potable water—which is actually a huge global concern right now—much more easily through the power of the mobile Internet.

Mr. BASS. And for both of you, isn't the multi-stakeholder design governance model if you will really unique in that it prevents government entities and nongovernmental entities for that matter from controlling the design of the network and thereby the content that rides over it. Do you agree with that or do you have any comment or elaboration on that?

Mr. VERVEER. Well, I think generally we think that this has in fact been enormously instrumental in creating the Internet that we have today. And we are very anxious that the free flow of information, the freedom of expression remains as a centerpiece in terms of one of the many capabilities of the Internet. And the multi-

stakeholder model tends to help protect that because it does bring all voices to the table. It is a kind of ethic in which no one set of voices is especially privileged and we think that probably does help in terms of this what you might think of is a broader political/social/cultural aspects of the Internet.

Mr. BASS. Thank you. I just conclude on a personal note, Commissioner McDowell. My father had the honor of serving in this body when I was about the age of your son, who is sitting behind you, and I remember well going to a Science—it was called the Space Committee in those days. He was a member of the Science and Technology—it was the greatest committee you could be on in the Congress because it was in the middle of the Space Race—being so excited that here I was in this great place and they went through this hearing and I didn't understand a single word of what was said. But when I got out I told all my friends that I knew all kinds of things now about where we were going in space. So Griffin, I expect you to brief your dad on this hearing, make sure he is set straight and knows where we are headed.

Thank you, Mr. Chairman.

Mr. WALDEN. Thank you, Mr. Bass. We appreciate that.

I am going to recognize the gentlewoman from the Virgin Islands.

Mrs. CHRISTENSEN. Thank you, Mr. Chairman. I ask unanimous consent on behalf of Ranking Member Eshoo to insert the New York Times editorial by Vinton Cerf into the record.

Mr. WALDEN. Without objection, so ordered.

[The information follows:]

The New York Times

May 24, 2012

Keep the Internet Open

By VINTON CERF

The Internet stands at a crossroads. Built from the bottom up, powered by the people, it has become a powerful economic engine and a positive social force. But its success has generated a worrying backlash. Around the world, repressive regimes are putting in place or proposing measures that restrict free expression and affect fundamental rights. The number of governments that censor Internet content has grown to 40 today from about four in 2002. And this number is still growing, threatening to take away the Internet as you and I have known it.

Some of these steps are in reaction to the various harms that can be and are being propagated through the network. Like almost every major infrastructure, the Internet can be abused and its users harmed. We must, however, take great care that the cure for these ills does not do more harm than good. The benefits of the open and accessible Internet are nearly incalculable and their loss would wreak significant social and economic damage.

Against this background, a new front in the battle for the Internet is opening at the International Telecommunications Union, a United Nations organization that counts 193 countries as its members. It is conducting a review of the international agreements governing telecommunications and aims to expand its regulatory authority to the Internet at a summit scheduled for December in Dubai.

Such a move holds potentially profound — and I believe potentially hazardous — implications for the future of the Internet and all of its users.

At present, the I.T.U. focuses on telecommunication networks and on radio frequency allocations rather than the Internet per se. Some members are aiming to expand the agency's treaty scope to include Internet regulation. Each of the 193 members gets a vote, no matter its record on fundamental rights — and a simple majority suffices to effect change. Negotiations are held largely among governments, with very limited access for civil society or other observers.

When I helped to develop the open standards that computers use to communicate with one another across the Net, I hoped for but could not predict how it would blossom and how much human ingenuity it would unleash. What secret sauce powered its success? The Net prospered precisely because governments — for the most part — allowed the Internet to grow organically, with civil society, academia, private sector and voluntary standards bodies collaborating on development, operation and governance.

In contrast, the I.T.U. creates significant barriers to civil society participation. A specialized agency of the United Nations, it grew out of the International Telegraph Union, which was established in 1865. The treaty governing the agency, last amended in 1988, established practices that left the Internet largely unaffected.

While many governments are committed to maintaining flexible regimes for fast-moving Internet technologies, some others have been quite explicit about their desire to put a single U.N. or other intergovernmental body in control of the Net.

Last June, then-Prime Minister Vladimir Putin stated the goal of Russia and its allies as "establishing international control over the Internet" through the I.T.U. And in September 2011, China, Russia, Tajikistan and Uzbekistan submitted a proposal for an "International Code of Conduct for Information Security" to the U.N. General Assembly, with the goal of establishing government-led "international norms and rules standardizing the behavior of countries concerning information and cyberspace."

Word of a few other proposals from inside the I.T.U. have surfaced. Several authoritarian regimes reportedly would ban anonymity from the Web, which would make it easier to find and arrest dissidents. Others have suggested moving the privately run system that manages domain names and Internet addresses to the United Nations.

Such proposals raise the prospect of policies that enable government controls but greatly diminish the "permissionless innovation" that underlies extraordinary Internet-based economic growth to say nothing of trampling human rights.

Some countries have expressed sympathy for these proposals. They are concerned about the outsized role they perceive that the United States plays in the direction and development of Internet policy. Some believe the status quo favors the interests of large, global Internet companies. Others believe the I.T.U. can help speed Internet access in the developing world.

The decisions taken in Dubai in December have the potential to put government handcuffs on the Net. To prevent that — and keep the Internet open and free for the next generations — we need to prevent a fundamental shift in how the Internet is governed.

I encourage you to take action now: Insist that the debate about Internet governance be transparent and open to all stakeholders.

Vinton Cerf *is Google's chief Internet evangelist. He is widely recognized as one of the "fathers of the Internet," sharing this title with the American computer scientist Bob Kahn.*

Mr. WALDEN. The chair now recognizes the gentleman from Ohio, Mr. Latta, for 5 minutes.

Mr. LATTA. Well, thank you very much, Mr. Chairman. And Mr. Ambassador and Mr. Commissioner, thanks very much for your testimony today. It is very enlightening. And now everyone not only in this body but I think across the Nation truly believes that we want to make sure that keep our Internet free and away from more regulations. And it is best to have been developed the way it has from the ground up, from private industry and without government regulation.

If I could, Mr. Commissioner, I would just like to ask a couple questions briefly because I think I would like to go back. I know there has been a lot of question as to businesses and business regulation, what could happen out there.

But the chairman has conducted hearings on cybersecurity that have been, you know, very insightful for everyone here, but, you know, in your testimony on page three when you are talking about the Russian Federation, you know, asking for jurisdiction over IP addresses because "there is a remedy to phone number shortages" or that the Chinese would like to see the creation of a system whereby Internet users are registered using their IP addresses. And I think, you know, you end up that in a lot of totalitarian type regimes, that would give those authoritarian regimes the ability to identify and silence political dissidents.

But how would you look at those two areas that might give those countries or other countries some kind of an advantage on, you know, attacking the United States or gaining more intellectual property that is being stolen over the net today? Because, again, the more that is out there that these companies have to submit of themselves to other countries, you know, it is hard enough right now to protect what we got. So if you could just answer that, I would appreciate it.

Mr. MCDOWELL. I think the general theme with that and also just looking at history at other analogies, it would be a scenario where they might want the rest of the world to live under a set of rules that they then break. In other words, they would break the rules and everyone else would abide by them, and that would be to their advantage.

Mr. LATTA. Mr. Ambassador, do you have a follow-up on that?

Mr. VERVEER. Well, the general issue that I think that you have raised about the question of protection of intellectual property, for example, is one that is a very, very serious one. It is one that we at the State Department work at very hard. It is one that the administration works at very hard through the office of Victoria Espinel in the White House. These are issues that obviously are complex in terms of figuring out appropriate enforcement modes and so forth, but there is certainly no debate about the importance of intellectual property protection in the broader context of the Internet. It is something that is very important.

Mr. LATTA. Thank you.

And Mr. Commissioner, it hasn't really been brought up very much today that you brought up in your testimony about that some foreign government officials have intimated to you about maybe having international universal service fund whereby foreign usu-

ally state-owned telecom companies would have an international mandate to charge certain web destinations on a per-click basis so they could build out on broadband. You know, with so many companies here in the United States having spent hundreds of millions of dollars to do that, would that then put U.S. companies at a disadvantage, especially since you would be looking at a lot of the companies in this country having to really finance that?

Mr. MCDOWELL. Well, I think you have to look at which web destinations attract the most traffic so it might be a YouTube or an iTunes or Netflix is expanding internationally as well, especially the video applications use a lot of bandwidth. And the point here is that there might be international sanction or international mandate for some sort of regulatory regime to impose these charges and that is a concern. If companies want to enter into contracts in a competitive market, I am all for that but we don't need an international regulatory body distorting the marketplace to anyone's disadvantage.

Mr. LATTA. Thank you very much, Mr. Chairman. And I yield back my time.

Mr. WALDEN. The chair now recognizes the gentleman from Illinois, Mr. Shimkus, who I think is our last one to ask questions of this panel.

Mr. SHIMKUS. Thank you, Mr. Chairman. And I apologize for obviously keeping this longer, but it is a very important subject and it is very important if you have ever been involved as I have been fortunate to be involved with democracy and freedom movements, at least in the former captive nations, Eastern European countries. I pulled up with great technology the cyber attack on Estonia in 2007. Just returned from the NATO Parliamentary Assembly meetings in Estonia just over the break, I have watched the crackdown on dissidents in Belarus. And, Commissioner McDowell, you are highlighting the prime minister of Russia's exact quote. International control of the Internet through the ITU should give everyone cause for concern. Those of us who follow these movements are rightly concerned about—as was stated in maybe question-and-answer or opening statement—the movement to do this is for regime stability and regime preservation. I mean it is clear. Look at the actors—Russia, China, Iran, I imagine North Korea would probably be on there if they really had any concern of anyone having computers to begin with other than the handful that they allow for downloading movies. I am not going to go there.

And briefly talk about will they be using—I will go first to the Ambassador and then Commissioner McDowell—the whole cybersecurity date, is this linked into this somehow and they are using cybersecurity as an excuse to get further control? And of that we should be concerned with, especially from state actors who have used technology to cyber attack other countries. They would be the last defenders of the system. Ambassador, do you want to comment on that?

Mr. VERVEER. Yes. Well, in the specific context of WCIT there have been contributions suggesting there ought to be some sort of a cybersecurity regulation. Now, the discussions have tended to be at a very high level. For example, something like all countries should be responsible for protecting their networks, things of that

nature. The United States generally opposes any significant effort to bring cybersecurity regulation into the ITU or similar bodies. There are, as you know, enormously significant issues surrounding cybersecurity. There is a great deal of engagement that we in the United States have with other countries about how to improve the cybersecurity environment but we don't think that apart from potentially very high level kind of statement about the desirability of cybersecurity that it has any place at all in terms of these ITRs.

Mr. SHIMKUS. Great. Commissioner McDowell, any comment on that?

Mr. MCDOWELL. Yes, my concern overall is that such international mandates could be used as a sword and a shield by authoritarian regimes at the same time. Keep in mind, though, that cybersecurity is discussed in many diplomatic for a not just WCIT or ITU but other places as well. But as a general matter, we should be very concerned that before entering into any international agreements on this that we aren't put at a disadvantage.

Mr. SHIMKUS. And I don't know if Congresswoman Bono Mack mentioned this. We were talking before I had to leave the room. But the process would be consensus agreement. Would those then have to go back to the national governments for like a treaty ratification as we see in other treaties like Kyoto—not to pick on it—but some countries picked it up; some countries like the United States never voted on it. I think that is the issue of balkanization, then, that you are referring to. But wouldn't that disenfranchise those countries that think they are trying to use it for their own regime stability and regime preservation but it would really hurt them in the global economy and developmental process? So they are cutting off their nose to spite their face if they do this. Ambassador, would you agree with that?

Mr. VERVEER. Yes, I would. You are exactly right with that.

Mr. MCDOWELL. I would agree with it as well.

Mr. SHIMKUS. Great. Thank you, Mr. Chairman. I yield back my time.

Mr. WALDEN. Thank you, Mr. Shimkus. We appreciate your questions and we appreciate the answers and the testimony from our two very distinguished panelists. Thank you. You have been most helpful in us understanding better what we face as a country and the challenge that is ahead for both of you and for our delegation going to Dubai. So thank you. We appreciate it.

And we will call up our next panel of witnesses. On our second panel, Ambassador David A. Gross, former U.S. Coordinator for International Communications and Information Policy, U.S. Department of State on behalf of the World Conference on International Telecommunications Ad Hoc Working Group; Ms. Sally Shipman Wentworth, she is the senior manager, public policy for Internet Society; and Mr. Vinton Cerf, Vice President and Chief Internet Evangelist for Google. We all admire that title and your work, Mr. Cerf, certainly the power it is to have Internet protocols and addresses and all those things you have created or help create. And we love the title, Internet evangelist.

So again we thank our prior panel and their testimony and we will start right in with Ambassador Gross will be our leadoff witness on the second panel. And again, just pull those microphones

close, make sure the lights are lit and you should be good to go. Thank you, Ambassador, for your work on this issue in the past and we look forward to your comments today.

STATEMENTS OF DAVID A. GROSS, FORMER U.S. COORDINATOR FOR INTERNATIONAL COMMUNICATIONS AND INFORMATION POLICY, DEPARTMENT OF STATE, ON BEHALF OF THE WORLD CONFERENCE ON INTERNATIONAL TELECOMMUNICATIONS AD HOC WORKING GROUP; VINTON CERF, VICE PRESIDENT AND CHIEF INTERNET EVANGELIST, GOOGLE, INC.; AND SALLY SHIPMAN WENTWORTH, SENIOR MANAGER OF PUBLIC POLICY, INTERNET SOCIETY

STATEMENT OF DAVID A. GROSS

Mr. GROSS. Well, thank you very much, Mr. Chairman, Ranking Member. It is a great privilege and honor to be back here with you all again. I appreciate it very much. And I probably should start with an apology to the audience that I did not bring lunch with us. So I will try to be brief.

I want to underscore a couple of points that were made both by the questions and the answers presented by the first panel. First of all, I think it is extraordinarily important for the American people to know that I think the preparations for the upcoming WCIT conference are in excellent hands. I think we have seen this demonstrated by the statements and actions by Ambassador Verveer, who you saw this morning, by Assistant Secretary Larry Strickling, by the White House, including Danny Weitzner, who has played an important role, and as was announced earlier today by Ambassador Verveer, the incoming Head of Delegation Terry Kramer.

I will confess I have known Terry for many years. We worked together at AirTouch. We have been good friends for many years and I could not be more pleased and confident of a successful outcome because of what I am sure will be his excellent leadership. I would say that his leadership is particularly important and helpful in addressing some of the questions that were raised to the first panel about the ability to create and form successful coalitions to be able to identify the issues. He has great experience not only in the telephone industry but also having worked and been very active internationally. He knows what it takes to bring people together and to be able to find that consensus that will be very important.

I would also want to recognize, of course, as you all have already done this morning, the extraordinary work that has been done by FCC Commissioner Robert McDowell. He has been tireless and passionate and very focused on this issue in ways that have greatly served all of us. And I personally and professionally am so pleased by his leadership to date.

Having had the great honor of working on these issues for many years at the U.S. State Department and elsewhere, I think there are a few core principles that make this particularly important, one that was stressed earlier today about the importance of bipartisanship. And I would like to commend both sides of the aisle and this committee particularly and its members for the great work that you have done with regard to the new Resolution 127. I think that is really quite extraordinary.

When I had the honor of co-leading the U.S. delegation to the World Summit on the Information Society, the U.N. heads of state summit, a similar joint resolution was enacted and I found that to be extraordinarily useful and important for us as we went forward because the world recognizes the importance in the role that Congress plays on these issues domestically and internationally and it is an important signal. The bipartisanship is a particularly important signal there that these are issues for which we are all together.

I would also say that I have the great honor currently of chairing an ad hoc committee that has been put together to address the WCIT issues and the like, and I think there is much to be learned from the diverse membership of that group. That group often takes different views on domestic issues and that is to be expected, but they come together and are unified, as the American people I believe are unified, on the issue that brings us together about the Internet, the importance of the Internet, and the role of intergovernmental organizations and others with regard to that going forward.

There are two things that I think are particularly important to focus on about WCIT. One is it is important to remember this is not just another conference but this is a treaty-writing conference. The output of this will not be just language that is used but in fact international law, and therefore, it is very, very important that the details be dealt with very carefully.

It is also very important because this affects not just the American people but people globally and the U.S. is always looked to by the people around the world for that leadership, and I am confident that that leadership will be maintained.

It is the great changes that have happened, the great growth in the Internet that has benefitted the people in the developing world and elsewhere perhaps most dramatically. And I think that is first and foremost something that we always need to keep in mind.

It is also important to recognize, as many of the comments this morning, that this is not about the ITU as an institution. The ITU is an important institution to the United States. Hamadoun Touré, the Secretary-General, has been very important as a leader and very helpful to the United States and otherwise.

Having said that, this is about other member states that has been outlined by a number of the answers earlier today, and those are the issues and the coalitions we need to build, the issues we need to address, and the facts we need to gather.

And with that, I believe my time is about to expire and I don't to delay this any further. Thank you very much.

[The prepared statement of Mr. Gross follows:]

TESTIMONY OF AMB. DAVID A. GROSS
BEFORE THE U.S. HOUSE COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY
MAY 31, 2012

SUMMARY

In the United States, there has long been a bipartisan consensus supporting decentralized, multi-stakeholder mechanisms associated with Internet governance. This approach has been essential to the extraordinary success of the Internet as well as to counter the many international attempts during the past decade or so for centralized government-imposed "top down" control over the Internet. In light of current efforts to impose regulations on the Internet by expanding the influence of intergovernmental institutions, including the International Telecommunication Union (ITU), over the Internet, it is more important than ever that Congress and the Administration present a clear and unified position opposing such attempts to restrict the Internet.

The open and decentralized structures of the Internet have helped to promote remarkable – in fact historic – economic, social, and political development. Adoption of top-down government-imposed restrictions without adequate consultation with all stakeholders risks forfeiting these gains, slowing the pace of critically important innovation and creativity, and stifling the free flow of information.

Similar efforts to expand intergovernmental control over the Internet have been made in the past. In those instances, the decentralized, multi-stakeholder model was preserved through the bipartisan and cooperative efforts of the United States government, other similarly-minded governments, industry, the technical community, and civil society.

A similar strategy can and must succeed again. Protecting the multi-stakeholder model and avoiding top-down governmental control of the Internet, while preserving the substantial benefits that the Internet generates, requires continued, strong bipartisan consensus within the United States government. Only a unified message domestically sends a clear signal abroad about the importance of a decentralized global Internet governance framework.

TESTIMONY OF AMB. DAVID A. GROSS

Good morning and thank you for the opportunity to speak today. My name is David A. Gross. Formerly, I had the great honor of serving in the State Department as the United States Coordinator for International Communications and Information Policy from 2001 to 2009. In that role, I was responsible for representing the United States internationally on matters related to the communications and information sectors – including before the International Telecommunication Union (ITU). Today, I am appearing on behalf of the WCIT Ad Hoc Working Group, an industry-led coalition with broad representation from the communications and information sectors including AT&T, Cisco, Comcast, Google, Intel, Microsoft, News Corporation, Oracle, Telefonica, Time Warner Cable, Verisign, and Verizon.

The Ad Hoc Working Group works closely with industry, the technical community, and civil society to monitor and understand developments at the World Conference on International Telecommunications (WCIT). As you have heard, that conference – scheduled for December 3-14 in Dubai – will renegotiate a major telecommunications treaty, the International Telecommunication Regulations (ITRs). Representatives of the Ad Hoc Working Group and its members have participated in State Department outreach processes and have attended and monitored ITU and regional preparatory meetings. Additionally, we are working with internationally recognized experts in economics, technology, and policy to produce high quality research documenting the significant technical changes, as well as the economic and social benefits, of information technologies that have been made possible by international telecommunications and technology policies that emphasize innovation, private sector leadership, and the avoidance of heavy-handed government intervention.

Today, I want to discuss the significance both historically and – more importantly – looking forward, of the longstanding, bipartisan consensus in this country supporting the multi-stakeholder model of global Internet governance as opposed to top-down government imposed policies. This is a view shared broadly by the technical community, civil society, and the private sector. This is not to say, however that this view universally is held beyond our borders. We have already seen proposals in the WCIT preparatory process offered by certain ITU Member States to modify the ITRs to expand the direct influence of governments and intergovernmental organizations over various economic, technical, and operational aspects of the Internet.

Efforts to bring Internet governance and policy under multilateral government-led control are not new. Indeed, the impulse to seize the reins of Internet development should itself be seen as testimony to the success of the Internet at creating enormous social and economic value, and to the positive impact it has had under the existing governance structures. Similar questions about the appropriate role for government intervention and top-down control of the Internet were a major focus at both phases of the United Nations' World Summit on the Information Society (WSIS), which was held in two parts: in Geneva in 2003 and in Tunis in 2005.

At WSIS, there were attempts by some in the international regulatory community to increase control by governments and intergovernmental organizations regarding the Internet. Because of the close cooperation between the U.S. delegation, certain other governments, industry, the technical community, and civil society – which were unified in their support of the multi-stakeholder model – WSIS did not result in any material change in Internet governance. This was a major and difficult accomplishment, as many had feared that the predominantly market-based, multi-stakeholder process would not survive the proposals made by various governments for radical change. As I have often stated, our success at WSIS was possible only because of the longstanding bipartisan support for the multi-stakeholder model of Internet governance and the hard work of numerous U.S. government officials (including the dedicated career officials at State, Commerce, the FCC and elsewhere), plus the active involvement of industry, civil society, and the Internet technical community.

The evidence for the success of the multi-stakeholder model and private sector leadership is all around us – not only in the extraordinary developments in information and communications technology that we bear witness to every day, but also in the economic and social impacts broadband, mobile, and other communications technologies have around the world. There truly has been a telecoms and information revolution, built from the ground-up by entrepreneurs.

Of course there remains tremendous work to be done. Too many areas still are underserved by broadband, and too many people, especially in the developing world, do not have adequate access to the benefits of the Internet We certainly recognize that we need to tackle through the multi-stakeholder process current and future threats to the Internet so that it can realize its full potential to promote economic and social development around the world. But experience shows us that the best way forward is through

targeted action, international cooperation, and multi-stakeholder processes, focusing on capacity building and private sector leadership – not top-down government policies and regulations made without adequate consultation with all relevant stakeholders, especially those policies and rules imposed or advocated by multilateral institutions.

One example of this positive vision is the principles on Internet policy-making adopted by the 34 member economies of the Organisation for Economic Co-operation and Development (OECD) last year. These principles were designed to help preserve the fundamental openness of the Internet while promoting certain public policy objectives, including privacy, security, infrastructure investment, competition, the appropriate protection of intellectual property, and trust in the Internet. Rather than specifying detailed technical and policy prescriptions, the OECD principles instead are thematic guidelines to assist policymakers in dealing with the novel issues raised by the Internet's expanding sphere of influence.

Importantly, a key tenet of the OECD principles is to encourage multi-stakeholder cooperation in a more transparent and ultimately deregulatory policy development processes. Therefore, the OECD principles clearly are incompatible with a top-down treaty-mandate—where only governments get a vote.

This is not to say that there is no role for intergovernmental organizations. The ITU, in particular, is extremely important to the U.S. national interests. It plays a vital role in spectrum policy and satellite orbital slot allocation; as an important telecommunications standards development organization; and – helpfully to U.S. and developing world entities alike – as a central venue bringing together international experts from developing and developed countries to discuss telecommunications policy. The leadership during the past six years by the ITU's Secretary General, Hamadoun Touré has been critically important to the world community, including to the United States, in seeking to advance global adoption of Internet generally and broadband specifically.

As a result, during the debate regarding WCIT, it is important to focus on those countries seeking to use the ITU and its treaty-based authority for counter-productive purposes, rather than unnecessarily attacking or criticizing the ITU itself. Instead, we should concentrate on those countries that seek to impose governmental mandates on the Internet indirectly via the ITU and other institutions. We will rebuff those efforts only by marshaling the facts, expressing clearly our policy goals (including why they benefit

the people of the world), and building successful coalitions of like-minded countries, institutions (including industry), civil society, and others. This has been done before and it must be done again.

Consistent with our positive message at WCIT regarding the importance of the multi-stakeholder model, and decentralized governance processes of the Internet, we should emphasize that one of the great successes of the existing, telecoms-focused ITRs is that the 1988 treaty allowed – in fact, promoted – commercial flexibility, especially regarding private-sector led innovation and the development of market-based telecoms business models. Indeed, ITU Secretary General Touré has explained "[t]he current ITRs helped establish the framework for the market liberalization, privatization and technological revolution that transformed the industry over the past two decades." While these foundational principles are implicit in the existing ITRs, they are not set forth in any specific provision of the current treaty. Thus, any update of the ITRs – as well as any other internationally negotiated policy documents – should reinforce these critically important precepts. We should seek to make explicit the guiding principles of promoting telecommunications liberalization, focusing on private sector leadership, and relying upon market-based agreements for telecommunications services. But to be clear, it is critically important that the ITRs not be revised in any way that provides a basis for the ITU or its member states to claim that the ITU has control or authority over the Internet.

As we approach the WCIT, and at the conference itself, a bipartisan commitment to multi-stakeholder institutions will be essential. So will efforts to find common ground with the rest of the world on approaches to treaty language that recognize private sector leadership, and preserve the freedom of the Internet from centralized control and top-down regulation – so it may continue as an instrument of global economic and social development. Importantly, the member economies of the OECD recognized just last year that "[a]s a decentralized network of networks, the Internet has achieved global interconnection without the development of any international regulatory regime. The development of such a formal regulatory regime could risk undermining its growth." Undermining the growth of the Internet is not in either the developed or the developing worlds' best interests.

Fortunately, I know the Administration understands the importance of defending the open and decentralized systems of Internet decision making and avoiding an international regulatory regime. Centralized control risks slowing innovation, hampering economic development around the world, and

facilitating restrictions on the free flow of information online. Officials from State, Commerce, the FCC, and the White House each have spoken publicly and insightfully about what's at stake. The statements made by our senior government officials have been excellent and deserves our strongest support. Importantly, we are very fortunate to have many senior career government officials, led in this effort by the State Department's Richard Beaird, who have been through these battles before and know how to succeed.

Continued focus and unity on this issue within the United States government will be essential. I know from first hand experience that the international community watches closely what the United States government says and does in domestic and international debates on Internet policy. Confirming the clear, unified, bipartisan position within Congress will help strengthen the negotiating position of the United States and its allies by illustrating the nation's resolve to maintain the decentralized, market-based, multi-stakeholder framework.

One key to the favorable outcomes at WSIS was the administration speaking clearly regarding what issues were appropriate and not appropriate for discussion. Maintaining a firm, public, bipartisan consensus will communicate unambiguously to the world about the confines within which we are willing to debate at WCIT.

Preserving the multi-stakeholder, dynamic and decentralized Internet is a priority that already unites the Administration, the House, the Senate, the private sector, and civil society. Now is the time to take our bipartisan consensus overseas, as part of the conversation about the dangers of treaty-based international regulation of the Internet – and the risks that poses to the Internet's success in connecting the world.

Mr. WALDEN. Ambassador Gross, thank you not only for your leadership on this issue but your testimony today and your encouragement on our bipartisan resolution, which we hope to be able to move rather rapidly to the House Floor.

Mr. Cerf, we are delighted and honored to have you here today, sir. We look forward to your verbal presentation of your testimony and your insights on this matter.

STATEMENT OF VINTON CERF

Mr. CERF. Thank you very much, Chairman Walden. And I see that Ranking Member Eshoo had to depart but I certainly appreciate her participation today. And members of the subcommittee, it is an honor to address you.

My name is Vint Cerf. I currently serve as Vice President and Chief Internet Evangelist at Google. As one of the fathers of the Internet and as a computer scientist, I care deeply about the future of the Internet and I am here today because the open Internet has never been at higher risk than it is now. A new international battle is brewing, a battle that will determine the future of the Internet. And if all of us from Capitol Hill to corporate headquarters to Internet cafés in far-off villages don't pay attention to what is going on, users worldwide will be at risk of losing the open and free Internet that has brought so much to so many and can bring so much more.

If we follow one path, a path of inclusion, openness, and commonsense, I am convinced that the Internet of the future will be an even more powerful economic engine and communications tool than it is today. The other path is a road of top-down control dictated by governments. This would be a very different system, a system that promotes exclusion, hidden deals, potential for indiscriminate surveillance, and tight centralized management, any one of which could significantly hinder Internet innovation and growth.

At the crossroads stands the International Telecommunication Union, an agency of the United Nations that came into being to regulate international telegraph services just 4 years after the Pony Express closed its doors. This agency plans to meet in 6 months to consider proposed changes to the international agreements governing telecommunications. Until this year the ITU—which, through the U.N., includes 193 member countries, each with only a single vote—has focused its attention on telecommunications networks and policies such as setting international standards for telephone systems, coordinating the allocation of radio frequencies and encouraging the development of telecommunications infrastructure in developing nations.

On the whole, this status quo has been benign and even helpful to the spread of the Internet. But the organization recently passed a resolution in Guadalajara calling to "increase the role of the ITU in Internet governance." This should cause significant concern.

In addition, some powerful member states see an opportunity to assert control over the Internet through a meeting in Dubai this coming December. Several proposals from member states of the ITU would threaten free expression on the web. Others have called for unprecedented mandates and economic regulations that would, for example, impose international Internet fees in order to generate

revenue for state-owned telecommunications companies. The international attack on the open Internet has many fronts.

Take, for example, the Shanghai Cooperation Organization, which counts China, Russia, Tajikistan, and Uzbekistan among its members. This organization submitted a proposal to the U.N. General Assembly last September for a so-called international code of conduct for information security. The organization's stated goal was to establish government-led international norms and rules standardizing the behavior of countries concerning information and cyberspace. Should one or more of these proposals pass, the implications are potentially disastrous.

First, new international control over the Internet could trigger a race to the bottom where serious limits on the free flow of information could become the norm rather than the exception. Already, more than 20 countries have substantial or pervasive online filtering according to the Open Net Initiative. And the decentralized bottom-up architecture that enabled the Internet's meteoric rise would be flipped on its head. The new structure would have the unintended consequence of choking innovation and hurting American business abroad.

As you can see, the decisions made this December in the ITU could potentially put regulatory handcuffs on the net with a remote U.N. agency holding the keys. And because the ITU answers only to its member states rather than to citizens, civil society, academia, the technical industry, and the broad private sector, there is a great need to insert transparency and accountability into this process.

So what can you do? I encourage this committee to take action now by urging the U.S. Government in partnership with likeminded countries and their citizens to engage in this process and protect the current bottom-up, pluralistic system of Internet governance and to insist that the debate at the ITU and all other international fora be open to all stakeholders. It is critically important for you to engage and help ensure that the world understands that the economic, social, and technical advances driven by the Internet are endangered by these efforts.

Thank you for the opportunity to testify on this very serious matter. I look forward to answering your questions.

[The prepared statement of Mr. Cerf follows:]

Testimony of Vinton Cerf
Vice President and Chief Internet Evangelist, Google Inc.
Before the House Energy and Commerce Committee
Subcommittee on Communications and Technology

Hearing on "International Proposals to Regulate the Internet"

May 31, 2012

Chairman Walden, Ranking Member Eshoo, and members of the Subcommittee.

Thank you for inviting me to testify today. My name is Vint Cerf and I serve currently as Vice President and Chief Internet Evangelist at Google Inc. I also serve as a Fellow of the Institute for Electrical and Electronics Engineers (IEEE), the Association for Computing Machinery (ACM), which last week elected me as its president, the American Association for the Advancement of Science (AAAS), the American Academy of Arts and Sciences, and the American Philosophical Society, and as a member of the National Academy of Engineering.

I have held positions at MCI, the Corporation for National Research Initiatives, Stanford University, UCLA, and IBM. Until late 2007, I served as chairman of the board of the Internet Corporation for Assigned Names and Numbers (ICANN) and I was the founding president of the Internet Society.

As one of the "fathers of the Internet" and as a computer scientist, I care deeply about issues relating to the Internet's infrastructure. This is why I am grateful for the opportunity to testify before your Subcommittee on the critically important issue of international Internet governance and regulation.

The Internet and the World Wide Web have generated an unprecedented explosion in commerce and creativity. According to a May 2011 study by the McKinsey Global Institute ("Internet Matters: The net's sweeping impact on growth, jobs, and prosperity"), nearly $8 trillion exchange hands each year through e-commerce. The same report states that the Internet accounts for 21 percent of gross domestic product growth in the last five years in mature countries, and that the benefits are not reserved for Internet companies – in fact, 75 percent of Internet economic impact benefits companies that are not pure Internet players.

And a March 2012 report by the Boston Consulting Group – entitled "The Internet Economy in the G-20: The $4.2 Trillion Growth Opportunity" – provides policy makers more data about the impact of the Internet on economic growth and job creation. According to the report, Internet-savvy small- and medium-sized enterprises (SME) across eleven of the G-20 countries have experienced 22 percent higher revenue growth over the last three years than comparable businesses with no Internet usage. The report also found that SMEs that have an Internet presence generate more jobs. In Germany, for example, 93 percent of companies that were heavy users of the Internet and web services increased employment over the past three years, compared with only 50 percent of their offline competitors.

But today, despite the significant positive impact of the Internet on the world's economy, this amazing technology stands at a crossroads. The Internet's success has generated a worrying desire by some countries' governments to create new international rules that would jeopardize the network's innovative evolution and its multi-faceted success.

This effort is manifesting itself in the UN General Assembly and at the International Telecommunication Union – the ITU – a United Nations organization that counts 193 countries as its members, each holding one vote. The ITU currently is conducting a review of the international agreements governing telecommunications and it aims to expand its regulatory authority to include the Internet at a treaty summit scheduled for December of this year in Dubai.

Such a move holds profound – and I believe potentially hazardous – implications for the future of the Internet and all of its users. If all of us do not pay attention to what is going on, users worldwide will be at risk of losing the open and free Internet that has brought so much to so many.

In my testimony this morning I will address this effort at the ITU and make three broad observations and recommendations:

- First, I believe that the multi-stakeholder approach to Internet governance and technical management has been, and will continue to be, the best way to address the technical and policy issues facing the Internet globally.

- Second, it is critically important for the United States Government to engage in the ITU process and encourage like-minded countries – those that believe in the social and economic benefits of a free and open Internet – to do so as well. We need a global coalition to ensure transparency, openness, and an outcome that preserves the features of the Internet and its operation that have been so productive over the past 30 years.

- Finally, the very real concerns about the damage that ITU regulation could do to the Internet should not minimize the existing concerns that developing nations have as they try to keep up with the 21st century economy. We can and should solve problems of access and education without compromising the Internet's essential open and decentralized character.

The Internet and the ITU

After its inception as a U.S. Government project, the Internet has been decentralized to maximize the effectiveness of the open, bottom-up, multi-stakeholder approach that has enabled unprecedented growth and innovation. This system was formally recognized in 2005 at the UN World Summit on the Information Society, and I believe it remains the right approach.

Many others agree. As the Organization for Economic Cooperation and Development noted in its December 2011 Recommendation on Principles for Internet Policy Making, the multi-stakeholder model provides "the flexibility and global scalability needed to address Internet policy challenges."

Many multi-stakeholder organizations have played a fundamental role in Internet governance and evolution. These include the non-profit ICANN, that oversees the handling of domain names, the Internet numeric address space, and the unique parameters needed for Internet standards; the Internet Architecture Board; and the Internet Engineering Task Force under the auspices of the Internet Society (ISOC), that develops and promotes technical standards via a series of volunteer-led working groups.

A recent and important adjunct to the multi-stakeholder institutions already associated with the Internet's governance is the UN's Internet Governance Forum (IGF). Created in Tunis in 2005, the IGF includes representatives from academia, civil society, governments, and the private sector. It is a highly democratic forum that enables the open expression of interests and discussion of concerns regarding the Internet, which can then be addressed by the appropriate expert body.

Of course, there is still room for improvement. For example, although ICANN has representatives from all world regions on its board, more international voices could be added. Similarly, although the IGF is already an open forum, it could do more to encourage and facilitate diverse groups, especially in the developing world, to participate in debate.

But if there's one thing that we should not do, it is to centralize decision-making power. The greatest strength of the current system of Internet governance is its meritocratic democracy. Anyone who cares can voice ideas and opinions, but the ultimate decisions are governed by broad consensus. It might not always be the most convenient of systems, but it's the fairest, safest, and historically most effective way to ensure that good ideas win out and bad ideas die.

Despite the benefits, there is a strong effort to put in place a system that stands in sharp contrast to the multi-stakeholder process.

Today, the ITU focuses on telecommunication networks, radio frequency allocation, and infrastructure development. But some powerful member countries see an opportunity to create regulatory authority over the Internet. Last June, the Russian government stated its goal of establishing international control over the Internet through the ITU. Then, last September, the Shanghai Cooperation Organization – which counts China, Russia, Tajikistan, and Uzbekistan among its members – submitted a proposal to the UN General Assembly for an "international Code of Conduct for Information Security." The organization's stated goal was to establish government-led "international norms and rules standardizing the behavior of countries concerning information and cyberspace." Other proposals of a similar character have emerged from India and Brazil. And in an October 2010 meeting in Guadalajara, Mexico, the ITU itself adopted a specific proposal to "increase the role of ITU in Internet governance."

Several other proposals from member states would dramatically limit free expression on the web. Others would subject cyber security and data privacy to international control, and allow foreign phone companies to charge fees for international Internet traffic – perhaps on a "per-click" basis.

As a result of these efforts, there is a strong possibility that this December the ITU will significantly amend the International Telecommunication Regulations – a multilateral treaty last revised in 1988 – in a way that authorizes increased ITU and member state control over the Internet. These proposals, if implemented, would change the foundational structure of the Internet that has historically led to unprecedented worldwide innovation and economic growth.

Because the ITU answers only to its member states – rather than to citizens, civil society, academia, the tech industry, and the broader private sector – there's a great need to insert transparency and accountability into this process and to prevent expansion of ITU or UN authority over the operation of the Internet.

U.S. Engagement in Partnership with Other Nations

It is critically important that the United States Government engage in the ITU process and encourage like-minded countries, NGOs, private-sector actors, and technical and civil society organizations that believe in the social and economic benefits of a free and open Internet to do so as well. We need a global and united coalition to ensure openness and an outcome that preserves the features of Internet development, governance, and operation that have produced economic, scientific, educational, and societal benefits for three decades.

To be clear, I do not believe that this is a challenge that the U.S. can meet on its own, but it is one that cannot be overcome without the leadership and engagement of the U.S. Government on three specific fronts: (1) promoting existing multi-stakeholder structures as much preferable alternatives to the centralization proposal of the ITU, (2) demonstrating for participating countries the tremendous benefits of the Internet as we know it today without the restrictions of an ITU or UN sanctioned global Internet treaty, and (3) ensuring an open and accountable process at the ITU so that the world understands the motivations and consequences of the ITU process.

Fostering Strong Multi-stakeholder Alternatives

As part of its engagement with the ITU and other international organizations, the U.S. Government should emphasize that best way to address concerns from countries is to work through the system of transparent, democratic oversight organizations that is already in place for discussing and helping to resolve issues relating to the Internet.

As I've noted above, there are great benefits stemming from and tremendous support for multi-stakeholder structures like the Internet Governance Forum (IGF). Like the ITU, it is part of the UN structure. It is highly democratic and requires participation from academia, civil society, governments, and the private sector.

We also need to work together to create and refine voluntarily developed codes of conduct. A U.S.-based non-profit called the Global Network Initiative (GNI) is a great example. Google, along with a handful of other companies, human rights organizations, investors, and academics spent two years negotiating and creating a collaborative approach to protect freedom of expression and privacy in the ICT sector. The principles were published, and the GNI reports annually regarding how well its members uphold its standards.

There are few losers for these types of agreements. Companies and governments build public trust and gain insights from other stakeholders. Users get valuable information from the reports, and added protection from potential threats.

This is not to say that the current multi-stakeholder system is perfect or that it doesn't need reform. As I note above, there will always be room for improvement and it is up everyone within the Internet community to participate in these process to continue to make the process better. For example, although ICANN has representatives from all world regions on its board, more international voices could be added and they can continue to improve on their processes to make them more transparent, accountable, and open. Similarly, although the IGF is already an open forum, it could do more to encourage and facilitate diverse groups, especially in the developing world, to participate in the debate.

The Tremendous Benefits of the Internet

I've referenced data indicating the significant economic benefits generated by the Internet. It's critical for the U.S. and other countries that have seen the positive impact of the Internet on their economies to highlight to ITU participants and other stakeholders the potential negative consequences of ITU regulation of the Internet on the world's economy.

Adding regulatory authority to the ITU – for example the ability to levy charges for international Internet traffic – could significantly hurt commerce. Small and medium U.S. businesses – indeed, small and medium businesses everywhere – are also important job creators, and we do not want to stifle their ability to grow by limiting the markets that they can reach.

Openness and Accountability in the ITU Process

One of the key concerns I have with the ITU's process is that it is neither transparent nor sufficiently open to non-governmental stakeholders – conditions that result in insufficient accountability.

Today, a number of civil society organizations from around the world are joining to ask the ITU for more transparency as it considers various proposals that would result in its power to regulate the Internet on a global basis.

Concerns about transparency stem not from theoretical concerns but from actual experience. The preparatory process for the ITU's meeting in Dubai has been opaque, with significant restrictions on access to documents and high barriers to ITU membership. In fact, most member states of the ITU have not even opened public dialogues with Internet stakeholders to guide the development of their national positions or to seek input on their proposals. Many proposals go beyond merely technical interoperability of telecommunications infrastructure and would impact free expression, security, and other important issues.

As a result, a number of leaders in the human rights and free expression communities from around the world have signed a letter to call into question the ITU's barriers to participation: "The continued success of the information society depends on the full, equal, and meaningful participation of civil society stakeholders (alongside the private sector, the academic and technical community, and governments) in . . . both technical and public policy issues."

Transparency and openness are critical issues and we raise them here because it is important for parties to fully understand a process that affects all Internet users. Nevertheless, transparency alone is not enough to transform the ITU into a true multi-stakeholder organization.

The Legitimate Concerns of Developing Nations

Only two billion of the world's seven billion people currently have access to the Internet. The UN in its Millennium Development Goals lists Internet penetration as a key metric in efforts to reduce poverty and encourage rational development, and expanding access need to be a priority. The data I outlined earlier regarding GDP growth and overall economic impact only highlight the importance of bringing access to those who do not yet have it.

Many countries believe that the ITU will help put policies in place that will promote development of broadband in developing countries. The ITU's Development program has done great work in developing countries to help promote broadband deployment, such as the Connect the World regional summits. Nevertheless, it is one thing for the ITU to suggest policy principles and assist in capacity building; it is quite another to adopt detailed regulations in this space. And the former can continue without the latter.

Rather, the ITU's development efforts ought to proceed in tandem with a vast number of national policies, public-private partnerships, and technical/non-profit community efforts to improve access and education in developing countries.

For example, ISOC has demonstrated the benefits of building Internet Exchange Points in Kenya and Nigeria. Google was involved in the Nigeria project, and it has supported the establishment and growth of Internet exchanges in the eastern Caribbean and the Middle East. We have also engaged in a number of other initiatives to increase access to the Internet in the developing world including building a proof-of-concept open access Wi-Fi network in Nairobi, Kenya. Google has been an active supporter of the

Network Startup Resources Center at the University of Oregon, providing equipment, funding and volunteer staff to assist in its capacity building efforts that span over two decades.

We believe that education is also an important component of the effort to get more of the developing world online. Over the past two years Google has worked with the market research firm Basis Research Ltd in six key African countries (Ghana, Kenya, Nigeria, Senegal, South Africa, and Uganda) to understand how and why consumers in those countries use the Internet, or conversely why they are not online. The most prevalent reason for not going online was lack of knowledge – everything from not knowing what the Internet has to offer to not knowing how or where to get online. Lack of access was a close second. The survey results are available for free to the public at www.insightsafrica.com.

There clearly is a significant need to educate consumers in regions like Sub-Saharan Africa about how to access the Internet and the benefits they would gain from getting online. Google is doing its part to educate consumers, and we're also supporting the training of network engineers through organizations such as the African Network Operators' Group and Middle East Network Operators Group.

ITU member countries may cite development benefits as they make proposals for greater centralized control, but new ITU regulations are the wrong solution. We can and should solve problems of access and education without compromising the Internet's essential open and decentralized character.

* * * * *

Chairman Walden, Ranking Member Eshoo, and members of the Subcommittee, reforms can be constructive, but not if the result is a global bureaucracy that deadens innovation and departs from the multi-stakeholder model.

I encourage respectfully this Subcommittee to take action now by urging that the U.S. Government – in partnership with like-minded countries and their citizens – engage in this process to protect the current, bottom-up, pluralistic system of Internet governance and to insist that the debate at the ITU and all other international fora be open to all stakeholders. It is critically important for you to engage and help ensure that the world understands that the economic, social, and technical advances driven by the Internet are endangered by these efforts.

I thank you very much for the opportunity to testify on this important topic, and I look forward to working with the Committee and other stakeholders.

Mr. WALDEN. Mr. Cerf, thank you. We appreciate your leadership and comments.

Now, we go to Sally Shipman Wentworth, Senior Manager, Public Policy, Internet Society. Ms. Shipman, thank you for being here. We look forward to your testimony as well.

STATEMENT OF SALLY SHIPMAN WENTWORTH

Ms. WENTWORTH. Thank you, Mr. Chairman.

My name is Sally Shipman Wentworth, and I am senior manager of public policy for the Internet Society, a nonprofit organization dedicated to ensuring the open development, evolution, and use of the Internet for the benefit of all people throughout the world. On behalf of the Internet Society and our more than 55,000 members worldwide, many of whom are joining us in the audience and are watching the webcast around the world, I would like to sincerely thank Chairman Walden, Ranking Member Eshoo, and all the members of the subcommittee for the opportunity to testify on this important issue.

The Internet Society was founded in 1992 by many of the same pioneers who built the Internet, one who is sitting next to me. Since that time, the organization has served as a global resource for technically vetted, ideologically unbiased information about the Internet as an educator for technologists and policymakers worldwide, and as an organizer and driver of community-based Internet initiatives around the world.

The Internet Society also serves as the organizational home for the Internet Engineering Taskforce whose mission it is to make the Internet work better. We produce high-quality relevant technical documents that influence the way people design, use, and manage the Internet. These technical documents include the standards, guidelines, and best practices that created and continue to shape the Internet today.

The International Telecommunication Union's upcoming World Conference on International Telecommunications has rightfully drawn heightened attention from the global community as some ITU member states have proposed amendments to a key treaty, the ITRs, that could have far-reaching implications for the Internet. While the Internet Society has no voting role in the ITU process, we do participate as what is called a sector member. In that capacity, we have raised significant concerns that rather than enhancing global interoperability, the outcome of the WCIT meeting could undermine the security, stability, and innovative potential of networks worldwide.

The Internet Society understands why some of the ITU member states are focusing on the Internet and its infrastructure. The Internet has fundamentally changed the nature of communications globally and many nations view those changes as falling under the auspices of the ITU. Some proposals to the WCIT stem from the very real economic pressure that developing nations face as they seek to update their national policy frameworks to allow them to engage fully in the global information economy. But we are not convinced that the international treaty-making process represents the most effective means to manage cross-border Internet communications or to achieve greater connectivity worldwide. We are con-

cerned that some of the proposals being floated in advance of the December meeting are not consistent with the proven and successful multi-stakeholder model. And finally, we are concerned that the WCIT process itself, which severely limits meaningful nongovernmental participation, could create negative outcomes for the Internet.

The Internet model is characterized by several essential properties that make it what it is today—a global, unified network of networks that is constantly evolving that has provided enormous benefits but enables extraordinary innovation and whose robustness is based on a tradition of open standards, community collaboration, and bottom-up consensus. As the Internet has flourished, Internet policy development at the global, regional, and national levels has continued to evolve to work harmoniously with the Internet to assure its ongoing development. This process has provided the capacity to cope with the necessary and fast-paced technological evolution that has characterized the Internet to date.

In contrast to this approach, some WCIT submissions seek to apply old-line legacy telecommunication regulations to Internet traffic in a manner that could lead to a more fragmented, less interoperable global Internet for all. For example, proposals related to traffic routing, numbering, and peering would have significant impacts on the future growth of the Internet. But while we find strong cause for concern about the agenda of the WCIT meeting, there is no reason why it cannot produce thoughtful worthwhile policy developments that advance the mission of the ITU and the ongoing expansion of global communications without imposing dangerous and unnecessary burdens on the Internet.

Many ITU member states, including the U.S., have shown that they understand the value of the Internet and its unique multi-stakeholder model. Those delegates are in a critical position to advance an agenda at WCIT that respects the Internet and its global contributions while continuing to support the pro-competitive policies that have been so successful since the ITRs were first negotiated in 1988. Working with allies from around the globe, the United States Government has an opportunity to help chart a productive course forward at WCIT and to ensure that the value of the multi-stakeholder model and a light-touch regulatory approach are highlighted.

The Internet Society stands ready to play its part in this process and to assist the subcommittee in any way it can. Thank you very much for this opportunity.

[The prepared statement of Ms. Wentworth follows:]

Testimony of Sally Shipman Wentworth, Senior Manager of Public Policy for the Internet Society before the House Energy and Commerce Committee's Subcommittee on Communications and Technology
"International Proposals to Regulate the Internet"
May 31, 2012

Introduction

My name is Sally Shipman Wentworth and I am Senior Manager of Public Policy for the Internet Society. The Internet Society is a nonprofit organization dedicated to ensuring the open development, evolution, and use of the Internet for the benefit of all people throughout the world. On behalf of the Internet Society, and our more than 55,000 members worldwide, I would like to sincerely thank Chairman Walden, Ranking Member Eshoo, and all of the members of the Subcommittee for the opportunity to testify on this issue of critical importance to the future of the Internet.

In December of this year, the United Nations International Telecommunication Union (ITU) will hold the World Conference on International Telecommunications (WCIT) in Dubai, at which, Member States will review a 1988 treaty called the International Telecommunication Regulations (ITRs). The ITRs were developed to facilitate "global interconnection and interoperability" of telecommunications traffic between countries, and were negotiated by governments when the majority of global telecommunications networks were state-owned. The ITU administers several critical aspects of global telecommunications policy, including radio frequency spectrum allocation, satellite orbital slots, and the development of voluntary international telecommunications standards.

While ITU meetings are commonplace, this conference has rightfully drawn increased attention from the global community, as some ITU Member States have proposed amendments to the treaty that would impact the global Internet architecture, operations, content, and security.

The Internet Society is a Sector Member (i.e., nongovernmental, nonvoting member) of the ITU, and an active participant in its Telecommunication Standards and Telecommunication Development Sectors. As a Sector Member, we have significant concerns that, rather than enhancing global interoperability, the outcome of WCIT could undermine the security, stability, and innovative potential of networks worldwide.

In short, we are concerned that some government proposals would threaten the viability of the existing and successful global multistakeholder model for standards-setting and Internet policy development, and, by extension, would pose a direct threat to the innovative, collaborative, and open nature of the Internet itself. We appreciate the opportunity to address these concerns before the Subcommittee.

The Internet Society's Role: Education, Collaboration, and Engagement

The Internet Society was formed in 1992 by many of the same pioneers who developed the technologies and protocols that eventually became the Internet. Since that time, the organization has served as a global resource for technically vetted, policy-based, and ideologically unbiased information about the Internet; as an educator for technologists and policymakers worldwide; and as an organizer and driver of community-based Internet initiatives around the world.

The Internet Society serves as the organizational home for the Internet Engineering Task Force (IETF) and its related organizations: the Internet Architecture Board (IAB) and the Internet Research Task Force (IRTF). The mission of the IETF and its related organizations is to make the Internet work better by producing high-quality, relevant technical documents that influence the way people design, use, and manage the Internet. These technical documents include the key standards (protocols), guidelines, and best practices that created and continue to shape the Internet.

In addition, the Internet Society has more than 55,000 members and 90 Chapters around the world. We have more than 130 member organizations, comprising leaders of the global communications industry, academic, and Internet organizations. In the United States, the Internet Society has more than 11,800 members and five Chapters.

The Internet Society champions public policies that support the free and open Internet, and facilitates the open development of standards and protocols in support of the Internet's technical infrastructure. The Society provides educational and leadership programs, including training workshops in developing countries, and supports local Chapters that serve the needs of the growing global Internet community. For example, the Internet Society provides grants and awards to initiatives and outreach efforts that address humanitarian, educational, and societal issues related to Internet development and online connectivity.

An active contributor to a range of global and regional organizations, the Internet Society is a Sector Member of the ITU Telecommunication Standards and Telecommunication Development Sectors. As such we are able to participate and contribute in the ITU Group that prepares for the WCIT. However, as is the case for all nongovernmental Sector Members, we will not be permitted to participate in the actual policymaking process of the WCIT.

Proposed Regulations May Not Be Compatible With Internet Multistakeholder Model

It is understandable why some of the ITU's Member States would turn their focus to the Internet and its infrastructure. The Internet has fundamentally changed the nature of communications globally, and many nations view those changes as falling under the auspices of the ITU. But it is not clear to the Internet Society that the international treaty making process represents the most effective way to manage cross-border Internet communications, or that some of the proposals currently being floated are

consistent – or even compatible – with the multistakeholder model of Internet governance that has emerged over the past 15 years.

This evolutionary model vests authority in the hands of Internet users from around the world, who collaborate through standards-setting bodies like the IETF and multistakeholder organizations like the Internet Corporation for Assigned Names and Numbers (ICANN) and the UN-based Internet Governance Forum (IGF). This multistakeholder approach has proven to be nimble and effective in ensuring the stability, security, and availability of the global infrastructure, while still giving sovereign nations the flexibility to enact and enforce relevant Internet legislation within their borders. This model has been a key contributor to the breathtaking evolution and expansion of the Internet worldwide. Despite a formal 2005 consensus by ITU member states that Internet governance should follow a multistakeholder model, the very nature of the WCIT negotiations, which vest discussion and decision-making in the hands of only government stakeholders, runs counter to that multistakeholder model, and threatens to undermine its effectiveness. Furthermore, the substance of the WCIT negotiations, which will likely include efforts to apply old-line, legacy telecommunications regulations to Internet communications, could lead to a more fragmented, less interoperable global network.

The global communications environment has changed significantly since the 1988 World Administrative Telegraphy and Telephone Conference (WATTC) that crafted the most recent version ITRs. Since 1988, people around the world have come to interact and communicate in fundamentally different ways as a result of those changes. In particular, the Internet has grown from being a little known research project to become a major force in the world's economic and political systems, as well as in how people live, work, and play in their daily lives.

With more than 2 billion users worldwide, the Internet still has enormous capacity for growth. And given the open nature of the technology, users worldwide continue to have tremendous opportunities to innovate in ways that evolve and improve the Internet for all users. In economic terms, a recent report from McKinsey noted that the modern Internet is integral to GDP growth, economic modernization, and job creation, generating over 10 percent of GDP growth in the past 15 years in the countries studied.[1] And it's not just the Internet that has changed the way we communicate. Even "traditional" telecommunications services have undergone dramatic changes in the intervening years since the ITR negotiations. A wave of privatization and competition has replaced many of the traditional government monopolies that dominated the international telecommunications landscape in 1988.

At its plenipotentiary meeting in Guadalajara, Mexico in 2010, ITU Member States passed Resolution 171, which notes "advances in technology have resulted in an increased use of IP-enabled infrastructure and IP-based services and applications presenting both opportunities and challenges for Member States and Sector Members." The resolution asserts that it may be necessary to update the ITRs in light of these changes. While the ITU Membership is still in the preparatory process for the WCIT, the Internet Society has identified a number of draft treaty proposals that could have impacts for the Internet. In general, we have serious concerns about the negative impact of some of these proposals, which seek to fence off the Internet within the constraints of national telecommunications regulations. Applying these old rules to the way Internet traffic moves between borders could have wide ranging effects on interoperability and security, and could foist new costs on end users.

From a process standpoint, the Internet Society is concerned that these major decisions are being made in a purely intergovernmental setting and will therefore lack the broad range of input and collaboration that are the hallmarks of multistakeholder policy development. It is not simply that the treaty

[1] McKinsey Global Institute. *The Internet Matters: The Net's Sweeping Impact on Growth, Jobs and Prosperity.* May 2011.

negotiation process excludes nongovernmental stakeholders from decision-making, but that it dramatically limits the extent to which participants from industry and civil society can even be meaningfully heard. In the United States, in contrast, the administrative process contains a wide range of checks and balances, including comment periods and public meetings that collect, record, and in many cases, incorporate public opinion into the rulemaking process. The WCIT lacks any similar structure to bring in expert advice, which makes it prone to making closed-door decisions without the benefit of the widest possible range of external input.

The Internet is characterized by several essential properties that make it what it is today – a global, unified network of networks that is constantly evolving, that has provided enormous benefits, that enables extraordinary innovation, and whose robustness is based on a tradition of open standards, community collaboration, and consensus. As the Internet grew and flourished, Internet policy development at the global, regional, and national levels has continued to evolve to work harmoniously *with* the Internet to assure its ongoing development. This process has provided the capacity to cope with the necessary and fast paced technological evolution that has characterized the Internet to date. We do not yet know where this innovation will take us.

Today's unique policy development process is reflected in the existing model of Internet governance, which has been the topic of intense discussion by governments, private sector, civil society, and the Internet technical community for nearly a decade. The 2005 United Nations World Summit on the Information Society (WSIS) formalized an agreement that each stakeholder group has a role and responsibility in Internet governance, and affirmed a commitment to the use of open, transparent, and pro-competitive regulatory frameworks in Internet governance. Discussions of Internet governance have continued at the annual IGF and a growing number of related national and regional events, where participants have come to understand and increasingly support the multistakeholder model.

Yet despite this broad consensus, some governments continue to press to develop new, binding international, intergovernmental regulation for the Internet. They have not been successful thus far, in part because knowledgeable stakeholders have been fully engaged in the discussions, and have been able to demonstrate the benefits of allowing the Internet to develop in a relatively permissive environment where innovation and use are encouraged rather than constrained.

A recurring motivation for these regulatory efforts, including some of the proposed changes to the ITRs, stems from the very real economic pressures that developing nations face as they seek to update their national policy frameworks to allow them to engage fully in the global information economy. While we often cite the Internet's low barriers to entry as one of its prevailing virtues, this is less of a reality in developing nations that lack an effective broadband infrastructure. Some of these nations view bureaucratic and regulatory tools as a way to make up that shortfall, by allowing them to reap financial benefit from the traffic that crosses their borders. While the Internet Society disagrees strongly with this approach, we believe it is important to acknowledge the very real pressures that drive it, and wherever possible to provide alternative methods for developing nations to build their own Internet capacity. We are particularly proud of our global work in supporting the development of Internet Exchange Points, which can dramatically improve Internet performance and drive down connectivity costs in developing nations. We urge all stakeholders concerned about the current discussions at the ITU to get involved with development efforts, which could serve as a far more productive focus for global cooperative efforts on the Internet.

The Internet Society sincerely hopes that the results of the upcoming ITU treaty negotiations will enable continuing growth and innovation to support the future of global communications. We are

concerned, however, that the successful multistakeholder approach may be undermined in a forum where only one stakeholder group – governments – are permitted to speak.

A Productive Path Forward on International Telecommunications Regulations

While we find good reason for concern about the agenda of the WCIT meeting in December, there is no reason why it cannot produce thoughtful, worthwhile policy developments that advance the mission of the ITU and the ongoing expansion of global communications without imposing dangerous and unnecessary burdens on the Internet. Many ITU Member States, including the United States, understand the value of the Internet and its unique multistakeholder model. Those delegates are in a critical position to advance an agenda at WCIT that respects the Internet and its global contributions while continuing to evolve pro-competitive policy approaches that have clearly worked in the field of international telecommunications since 1988.

The last twenty years has demonstrated that an open and transparent environment promotes the development of world-changing new ideas and innovations. Any revisions to the ITRs should require Member States' commitment that their decision-making processes will be open, transparent, and include direct multistakeholder participation, including civil society, which is consistent with the principles established at the WSIS. Those principles represent not only a consensus opinion of the heads of ITU Member States, but also a proven, productive approach to Internet management, engagement, and oversight. The Internet has thrived since the WSIS concluded in 2005, as has the institution it created: the multistakeholder Internet Governance Forum (IGF).

Further, any expanded regulation at the infrastructure level is likely to have an impact on growth and innovation and should be undertaken with the greatest care. In cases where a regulatory measure is needed, Member States should commit to ensuring that these are justified, and consist of high-level

principles, rather than granular, operational regulations that would endanger global interoperability of networks. Regulation should not interfere in commercial decisions, be based on specific technologies or business-models, or seek to substitute government action for the private sector.

The ITRs should enshrine a commitment to the use of open and voluntary international standards. Interoperability, mutual agreement, and collaboration are invariable requirements for the Internet's survival. Many standards development organizations (SDOs) contribute to the smooth functioning of the Internet, and new SDOs have emerged over time, so it is potentially damaging to impose a preference for some SDOs over others. The ITRs should reflect the substantial evolution and advancements in the area of telecommunications policy in the 24 years since the WATTC. In particular, its text should seek Member States' commitment that their regulatory regimes be independent, non-discriminatory, transparent, technology neutral, and encourage competition.

Since 1988, the technology, providers, users, and regulators of telecommunication networks and services have changed in ways that would have been unimaginable for delegates to the WATTC. Yet, the ITRs have served the Member States of the ITU for nearly a quarter of a century without being revised. To the extent they have been a success, it has been a result of their addressing issues at a suitably high level. When deciding the eventual outcomes of the 2012 WCIT, it is vital to understand and to respect the basic properties that have allowed global communications networks to flourish for the betterment of everyone.

Conclusion

The Internet Society applauds the Subcommittee for addressing the critical and oft-misunderstood issues surrounding the upcoming WCIT and the renegotiations of the ITRs. While somewhat esoteric to outsiders, these proceedings could have a dramatic impact on the global Internet.

The Internet's core properties of openness, innovation, and interoperability, which we all value so dearly, are supported by a carefully crafted global management and standards-setting model that fully engages the stakeholders who build, maintain, and rely on the global Network of Networks. What may seem like small changes to the ITRs could have a far-reaching impact on the Internet – indeed, some of the changes likely to be contemplated in Dubai are anything but small.

Like many ITU Member States, the United States has long demonstrated its appreciation for the Internet and its unique management and oversight structure. Working with like-minded allies from around the globe, the United States Government delegation has an opportunity to help chart a productive course forward at WCIT, and to ensure that the value of multistakeholderism, and light-touch regulatory involvement is highlighted.

Meanwhile, Internet stakeholders from around the world in industry, civil society, academia, and the technology community have a critical role to play in the months leading up to WCIT. We welcome the opportunity to participate in open, national preparatory processes as we do in the United States. And while nongovernmental stakeholders cannot directly participate in the negotiations, we can make our voices heard about the value of the open, innovative Internet, and the effectiveness of the multistakeholder model. The documented successes of that model – and of the Internet itself – comprise the most compelling argument for treading lightly with new policies and regulation. The Internet Society stands ready to play its part in this process, and to assist the Subcommittee in any way it can.

Mr. WALDEN. Ms. Wentworth, thank you for your testimony.

And we will go into questions now. And I want to go straight to you.

You mentioned in your testimony there are other parts of the United Nations that have activities concerning Internet governance. If the ITU meeting is not the only place where this is being discussed, what other things are going on that we should be aware of?

Ms. WENTWORTH. Yes, thank you for that question. I do think it is important that we put the WCIT in context. The WCIT is an extremely important event in 2012. It is a treaty-making conference but the discussion of Internet governance will not stop there. There are ongoing discussions within the United Nations framework in the Commission for Science and Technology for Development within the International Telecommunications Union and within the U.N. General Assembly that seek to take on these issues of Internet governance with a great deal of specificity. All of these discussions are things that we at the Internet Society are following carefully and we think that multi-stakeholder engagement and discussion of these issues over the next several years is going to be extremely important.

Mr. WALDEN. Mr. Cerf, you seem to be weighing in there with a nodding head.

Mr. CERF. I am certainly in agreement with Ms. Wentworth. First of all, the ITU is not the only element in the United Nations that is interested in Internet matters. The point about the Committee on Science and Technology is one example; ECOSOC is another. There is a long list of players who see the Internet as a very fundamental part of the environment now and they would like very much to have some influence over it. I worry about even such activities as the Internet Governance Forum, which emerged out of the world summit on the Information Society. The reason it has been successful, at least up until now, is that it started as a multi-stakeholder activity but as responsibility for the subject matter under discussion in the IGF shifted from one body to another, the question about who controls the agenda now becomes a big issue.

The process of involvement in the United Nations has one unfortunate property that it politicizes everything. All the considerations that are made, whether it is in the ITU or elsewhere, are taken and colored by national interests. As a longstanding participant in the Internet Architecture Board and the Internet Engineering Taskforce where we check our guns at the door and we have technical discussions about how best to improve the operation of the Internet, to color that with other national disputes which are not relevant to the technology is a very dangerous precedent. And that is one of the reasons I worry so much about the ITU's intervention in this space.

Mr. WALDEN. There are some press reports out of this hearing already that would tend to say that Ambassador Verveer's comments mean there really isn't a grave threat to the Internet and that there aren't these serious threats on the table. Would you agree with that characterization or do you feel this is a very serious matter?

Mr. CERF. I am still very nervous, Mr. Chairman, about this process. I will make one observation that it is not just a matter of the voting question and the one nation, one vote. The substance of the changes or additions to the treaty are critical. And here we have somewhat more leverage I think. Those are not necessary just a matter of voting. I think Ambassador Gross will probably amplify on this, but the negotiations for the actual language probably gives more leverage to us than the actual voting process does. But I have to say, Mr. Chairman, that there is a notion in what is called chaos theory called the butterfly effect. The butterfly waves its wings in Indonesia and we have a tsunami somewhere else. I do worry that small changes can be used and interpreted——

Mr. WALDEN. Right.

Mr. CERF [continuing]. In ways that could be quite deleterious to the utility of the Internet.

Mr. WALDEN. And Ambassador Gross, what strategies did you employ when you had the honor and opportunity to fend off international regulation of the Internet that the U.S. Government should follow now?

Mr. GROSS. Well, thank you very much. And if I may, before addressing that, I just want to echo exactly what Vint Cerf just said. And I think one of the keys here as we think about this is this is not about a discussion at WCIT about broad policies. That happens at conferences on a regular basis and are very important. And something that this chamber can particularly appreciate, the negotiations over our treaty text, language, language is important. Language has impact. And so what will be a real test for our negotiators and for all of us is to be careful as to the language so the language doesn't come forward and mean something today and mean something very different than the way in which, for example, Commissioner McDowell talked about where it morphs into something very difficult and something very dangerous. This is not an issue of the ITU secretariat. This is an issue for member states to negotiate and to be very, very cognizant about.

With regard to strategies, I think the strategies have been—already some of them have been adopted by the current group. That is it is very important to be clear. One of the problems and one of the opportunities you always have in international negotiations is to find fuzzy language to cover up. One of the keys here because of the importance of the issue and because of the implications of the issue for the over two billion users of the Internet worldwide is to be very clear as to what it is the U.S. is interested and willing to discuss and to negotiate of which there are many things and those areas which are redlines, things for which we will not agree. And it is not a question of finding the precise language. It is yes; it is no. It is very, very binary in that sense. And I think that will be very clear. And the building of the coalitions as was discussed in the first panel I think is obvious and important and I am very confident we will be able to do that.

Mr. WALDEN. I appreciate your answers to my questions, all the panelists.

We will now go to the gentleman from Massachusetts, Mr. Markey, for 5 minutes.

Mr. MARKEY. Thank you, Mr. Chairman, very much.

So, Mr. Cerf, which countries are you most concerned about in terms of their agenda?

Mr. CERF. Well, as we heard earlier, the ones that are most visible right now in my view are Russia and China who have their names on a number of proposals. But others have come forward, surprising ones. Brazil, for example, and India have surprised me with their interest in intervening and obtaining further control. The others are the ones that you would normally expect. We hear from Syria, we hear from other repressive regimes, even those in Saudi Arabia, for example. Those who are threatened by openness and freedom of expression are the ones that are most interested in gaining control through this means.

Mr. MARKEY. Um-hum.

Mr. CERF. There are other motivations, however, that also drive this whole process. The developing world has historically generated substantial revenue from telecommunication services, as I am sure you are well aware. The Internet has become the alternative to much of what had been the telecommunications environment and I see them looking for ways, adapting the earlier telecommunications settlement arrangements, interconnection arrangements and the like as a way of recovering revenue that they didn't have. So there are multiple——

Mr. MARKEY. Ambassador Gross mentioned this—give us one redline subject that we should never entertain?

Mr. CERF. I think two things in particular. I would never want to see any of the ITU–T standards being mandatory. They should stay in voluntary form. And second, I think we should run away from any kind of settlement arrangements or enforced interconnection rules that would interfere with the open and very private sector aspect of Internet connectivity. Today, it is a voluntary system. It grows biologically and it has benefitted from that.

Mr. MARKEY. Is there an analogy here to the satellite system that allowed governments to just extract windfall profits in countries all around the world that ran totally contrary to what should be the policy, to ensure that every citizen has real access to a phone network?

Mr. CERF. This is an economic question of an engineer and I have this feeling you might deserve the answer that you got. To be honest, I think that we see a great desire to take advantage of the Internet in ways that damage the freedom and openness and the permission-less innovation which has allowed it to grow. To allow any rules that sequester this innovation and inhibit others would damage the future of the Internet dramatically. When you see new applications coming along, they come from virtually anywhere in the world. They don't all come from the United States, and it is important that we preserve that capability.

Mr. MARKEY. Thank you. No, but I appreciate kind of the global nature that you bring to it, the butterfly effect in Indonesia here creating a tsunami in another place. Here in the United States we just say it is Mrs. O'Leary's cow that ultimately burns down the whole city, but that would be too American. You know, you want to give us the global view of where innovation can occur, where a disaster can emanate from in terms of the impact that it has upon

the global Internet system. But that is who you are. You know, that is what this panel is really all about.

Ambassador Gross, give us your one redline. Do you agree with Mr. Cerf or do you have another issue as well?

Mr. GROSS. I always agree with Vint but I think actually there are a number of redlines.

Mr. MARKEY. Give me one and then I am going to go to Ms. Wentworth.

Mr. GROSS. Well, I think the number one redline is that there should be no top-down control of the Internet directly or indirectly associated with any international governmental institution, including the ITU.

Mr. MARKEY. OK. And Ms. Wentworth, do you have one?

Ms. WENTWORTH. We would certainly agree with the comments of Mr. Cerf with respect to making voluntary standards mandatory. That would have considerable impact on the engineering architecture that goes into the Internet. And we are also very focused on the definitions in the treaty. As we know, definitions will give you the scope and a number of the proposals to change the definitions would in fact clearly implicate the Internet in the treaty.

Mr. MARKEY. Mr. Cerf, give us your 30 seconds. What do you want this committee to remember as we go forward over the next 6 months and over the next 6 years in terms of what we should be apprehensive about?

Mr. CERF. So you have already started. This hearing is a wonderful beginning. The proposed legislation speaking to this problem in a bipartisan—I am sitting here thinking bilateral—bipartisan way——

Mr. MARKEY. It is so rarely used that, you know, I know why it is hard to come up with——

Mr. CERF. Voicing your concerns to the Executive Branch also extremely important and making this visible around the world is also very important. So I think you have started that process and I am deeply grateful for it.

Mr. MARKEY. Great, thank you.

My time is expired. I apologize.

Mr. SHIMKUS [presiding]. The gentleman's time is expired. I would like to recognize myself for 5 minutes.

I mean, I really enjoy this discussion because it is when free nations give up their decision-making process to a world organization that is not totally defined to be free, then there should be credible concerns. And I think we are raising those today. We debate this issue about the U.N. We get asked by our constituents all the time about the role of the U.N. Should we be involved in the U.N.? Should we fund the U.N.? And I have tried to keep a balanced view where I haven't voted to leave the U.N. but I have been skeptical about the role it plays. So it is keep current funding, get reforms.

Here are some of the things that the U.N. has done. Cuba was vice president of the United Nations' Human Rights Council and China, Russia, and Saudi Arabia also serve on that council. North Korea and Cuba serve as head of the Conference on Disarmament. Mugabe was just named a U.N. leader for tourism by the U.N. World Trade Organization. Iran sits on the U.N. Commission on the Status of Women and formerly chaired the Joint Board of the

U.N. Development Program and the U.N. Population Fund. Saudi Arabia is a member of the Executive Board of U.N. Women. I am not making this up and you can't. But I mean that is a concern.

And there has also been some international debate and discourse about having a world organization based upon shared values—democracy, freedom, rule of law—things that would make this process a little bit easier than trying to negotiate with totalitarian regimes who will not have the best interest of free discourse and exchange of views and ideas and values. So I appreciate you coming. I appreciate the raising of this concern and making sure that we are all in and prepared to keep this great architecture.

I took a picture of you all when we started and I Tweet like a lot of people and, you know, kind of did the headline of the hearing, and I said if it is not broken, don't fix it. That system has worked. Obviously, there is some tinkering that some of you agree that must be done or is there not? Should we not touch it? Or if there is tinkering to be done, what should be done? Mr. Gross?

Mr. GROSS. Well, thank you very much. The answer is there are always opportunities to improve anything, except for my wife who is sitting behind me, of course. But instead, I think the key here is who does the tinkering and what the mechanism is? I think the genius of the Internet has been not only its decentralized nature but its multi-stakeholder processes for making decisions, bringing those with the best and the brightest ideas from wherever they are no matter what their positions are to be able to have a say and to make those decisions in a voluntary, bottom-up approach. That approach is the key.

And I think the rub here, as you have heard this morning and early this afternoon has been concern about a top-down governmental set of ways of dealing with what are undoubtedly real issues for real people around the world, whether it is security, whether it is fraud. It is a variety of things. We know that there are many issues that need to be addressed. Who does the addressing? What those mechanisms turn out to be I believe are really the key to success in the way to deal with these issues.

Mr. SHIMKUS. And I was going to ask all three but I want to get a different question to Mr. Cerf. Any tinkering, no matter how well intentioned, could it be flexible enough to keep the process moving forward or will tinkering itself really mess up the stakeholder involvement in the system we have today?

Mr. CERF. So I think several observations might be relevant here. The first one is that we can't run away from the United Nations because it is too important a body for us to ignore. So we have to participate in its processes. But we have another opportunity which I think we should emphasize and that is to encourage more international involvement among the various nation-states in the multi-stakeholder processes that are open and available to them. That includes the Internet Governance Forum, the Internet Engineering Taskforce, ICANN itself and all of its multi-stakeholder processes. I think if we make those increasingly attractive and effective that this could be a counterbalance and alternative to the focus of attention which is leading in the direction of U.N.-based activity. This would also reinforce what we have discovered over the last 15 years, which is that multi-stakeholder processes

actually work. They do bring many different points of view to the table and they result in better policy.

Mr. SHIMKUS. Thank you. And I appreciate it. I don't have time to ask my follow-up question to you but I apologize. Thank you for your testimony.

And now, I would like to recognize the ranking member of the full committee, Mr. Waxman, for 5 minutes.

Mr. WAXMAN. Thank you very much, Mr. Chairman.

Mr. Cerf, earlier today, Ambassador Verveer stated that the U.S. is advocating for the WCIT conference report to be made available to the public. In addition to this proposal for increased transparency, what other specific measures can be taken to shine more light into the ITU's processes?

Mr. CERF. Well, the obvious possibility would be to open this process up to other stakeholders, which is not a typical conclusion one reaches in international agreements. But it strikes me—again, reflecting back on our written successes with multi-stakeholder processes—that transparency and openness produces much better results. Now, whether anyone in the current governmental world could be persuaded of that, I don't know. But I am a great advocate of trying to include civil society, the technical world, the private sector in matters that will have a very direct impact on them. So once again, publication of proposals and involvement of other stakeholders would be very attractive.

Mr. WAXMAN. Well, I would think it is critical for the U.S. and other countries that have seen the positive impact of the Internet on their economies to highlight to the ITU participants and other stakeholders of potential negative consequences of the regulation of the Internet on the world's economy. But what would be the role for the private sector in this process? How would they participate?

Mr. CERF. So the private sector actually operates most of the Internet. I don't know what the numbers are but it probably exceeds 90 percent. So in some sense, no matter what we do, no matter what anyone says, it is the private sector that operates this entity and its actions in a sense determine what kind of Internet we all have. So my belief is that we have an opportunity here to empower the private sector to engage in policy-making which does not have an avenue to do today, at least not very effectively. For example, you will hear the ITU say, well, you could be a sector member. I think Ms. Wentworth might agree with me that even as a sector member having paid your dues, you don't always either get to participate or even have, you know, current information about what is under debate. So once again, I think openness is going to be our friend here but we have to advocate strongly and loudly for it.

Mr. WAXMAN. Ms. Wentworth or Mr. Gross, do you have any additional comments or suggestions to increase the transparency of the ITU process?

Ms. WENTWORTH. Well, the Internet Society has certainly been an advocate of opening up this process for the WCIT in general, the Internet policy-related discussions that are happening within the United Nations more broadly, we think that the discussions can only benefit from more transparency. We come from the technical community and we look at some of these proposals and think that there is a lot of that could be said about the technical implications

of what is being proposed. How do networks actually work? And would these proposals even be consistent with the architecture that we are trying to keep in place? And the answer is no in many cases. But that voice is not heard in the current process. We speak up when we can but we have, even as a sector member, very limited opportunities to engage.

Mr. WAXMAN. Mr. Gross?

Mr. GROSS. I think there are two sort of direct things. One is we should continue to advocate for other member governments to open up their domestic processes to allow for greater participation. The U.S. has greatly benefitted in terms of our negotiation but also our decision-making by the openness that we have always traditionally had and we want to continue to encourage that of others.

I think also at its core the problem here is that the ITU is by definition and intergovernmental organization. Only governments have votes. And so, ultimately, part of the question really is this issue is not a big issue when you deal with certain sets of issues, but when you deal with Internet issues, for example, that at their core are about over two billion people and their access to information, those are the ones that sort of call for the question not only of transparency but also where the lines are about what the ITU should be focusing on and what it should not be focusing on. I think that is where a lot of the issues can be resolved.

Mr. WAXMAN. Well, thank you very much.

I yield back my time.

Mr. SHIMKUS. The gentleman yields back his time.

The chair now recognizes Ms. Christensen for 5 minutes.

Mrs. CHRISTENSEN. Thank you, Mr. Chairman.

And thank you for your testimony and for your answers.

Mr. Gross, in Ambassador Verveer's testimony he stated—and all of you voiced the same concern—that allowing governments to monitor and restrict content or impose economic costs on international data traffic are of particular concern to the United States. We have talked a lot about the monitoring and restricting of content but could you share with us your coalition's views on the proposals regarding imposing the economic clause on international data traffic?

Mr. GROSS. Sure. I think it will come as no surprise to anyone that those are critically important issues. There are a number of different pieces of that. It is not just about the fact that it may change from a system in which there is voluntary market-driven contractual decisions made to exchange traffic into one for which there are some proposals to have some top-down regulatory regime akin, as Vint Cerf said, to the old settlements and accounting rate systems of the old telephone system. That is certainly a substantial concern and should be a substantial concern to everyone.

But also it extends to the issue of economic regulation and control about the issue of innovation generally throughout the Internet ecosystem, the ability—as Vint talked about—of innovations and changes and new technologies and new applications coming from anywhere, from anyone and the ability for all of us to benefit from that. And ultimately, all of that often boils down to one of I think the great core issues for all of us, which is the seamless flow of information, the ability of information whether it is commercial, po-

litical, economic, social to be able to flow seamlessly across the networks in ways that benefit the global community.

Mrs. CHRISTENSEN. Thank you. Go ahead.

Mr. CERF. I wonder if I could——

Mrs. CHRISTENSEN. Sure.

Mr. CERF [continuing]. Amplify on this just if you would permit.

There is this notion of nontariff trade barrier. I am sure you are very familiar with that. What I worry about is that the insidious effect of putting in detailed rules that amplify former telephone practices and projecting those into the Internet has the potential to destroy this sort of permission-less innovation but it also has the possibility of destroying potential markets. This is not just an American issue.

Mrs. CHRISTENSEN. Right.

Mr. CERF. We care about it because at Google we are a global operation and we want to reach everybody with our products and services. But the inverse is true. Anyone in the world should be able to reach anyone else in the world with a new product and a new service. Countries that choose to go away from that kind of openness are actually harming themselves and their own opportunities to exploit the Internet for improved GDP growth. And I worry greatly about that.

Mrs. CHRISTENSEN. Thank you. Well, just to continue with you a minute, Mr. Cerf, many countries do struggle with the problem of bringing broadband access to their citizens and look to the International Telecommunications Union for solutions to that problem. And you talk about this briefly earlier. How should we respond to their legitimate concerns? What can the U.S. Government do and what can private parties do?

Mr. CERF. So this is a wonderful question. Thank you so much for asking it. Two observations. First of all, the ITU, through its D, the Development Organization, has actually contributed to the growth of the net. I am a member of the Broadband Commission that seeks to find ways to expanding broadband access to the Internet all around the world. In that sense, a tip of the hat to ITU–D for that work.

At Google, we found many opportunities in the private sector to help expand access around the world. We take our equipment which we don't need anymore, we donate it to organizations like the Network Startup Resource Center at the University of Oregon. They repurpose that equipment. They deliver it to people especially in the Southern Hemisphere. Then, they train them. Then, they get books and documentation from Tim O'Reilly's publications and they set them up to actually build and operate pieces of the Internet which now get connected together to the rest of the global system. There are endless opportunities here for the private sector to engage. Anything that you and the committee can do to help make that easier to do would be most helpful. Legislation that makes it easier for us to repurpose equipment and to do training overseas would be very, very helpful. Just to advocate for that would be a good thing.

Mrs. CHRISTENSEN. Well, thank you. I am out of time.

Mr. SHIMKUS. The gentlelady's time is expired.

We want to thank you for appearing. I would just end by saying totalitarian regimes may not care if they have systems that work, and so as you have totalitarian regimes involved in international negotiations, they may want a system that doesn't work across international lines and stuff, just a cautionary note on my part.

Also, I need to say that the record will remain open for 10 days. You may get additional questions submitted to you by members of the committee. If you could reply to those if they come, we would appreciate that. Again, we appreciate your time being here.

And this hearing is now adjourned.

[Whereupon, at 1:01 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

Questions for the Record Submitted to
U.S. Ambassador Philip L. Verveer by
Representative Anna Eshoo
House Subcommittee on Communications and Technology
May 31, 2012

Question:

Why should other countries have confidence in the bottom-up, decentralized multi-stakeholder model for internet governance, led by organizations such as ICANN, the Internet Governance Forum (IGF) and Internet Engineering Task Force (IETF)?

Answer:

The principal reason other countries should have confidence in the existing internet governance arrangements remains that these arrangements have worked so well, producing a mechanism that has and continues to provide incalculable benefits to everyone in the world. The internet has evolved to operate in a separate and distinct environment that is beyond the scope or mandate of the International Telecommunications Regulations or the International Telecommunication Union. Stated another way, as a decentralized network of networks, the internet has achieved global interconnection without the development of any international regulatory regime. Specifically, the internet emerged from multi-stakeholder organizations such as the Internet Society, the Internet Engineering Task Force (IETF), the World Wide Web Consortium (W3C), the Regional Internet Registries (RIRs), and the Internet Corporation for Assigned Names

and Numbers (ICANN). These organizations have played a major role in designing and operating the internet, and have succeeded by their very nature of openness and inclusiveness. These existing institutions are most capable of addressing issues with the speed and flexibility required in the rapidly changing internet environment and, by their nature, are influenced by all stakeholders from the developed and developing world.

Question:

In his written testimony, Dr. Cerf suggests that the ITU process should be more transparent and open to non-governmental stakeholders. Do you agree? If so, how can the U.S. government advocate for greater transparency in the ITU and UN processes?

Answer:

In public statements and private meetings with International Telecommunication Union (ITU) officials, the U.S. government strongly encourages the ITU to adopt a more transparent and open process for non-governmental stakeholders to follow and be informed about the World Conference on International Telecommunications (WCIT) and other ITU-related activities. We were encouraged that the ITU Council recently announced its decision to make public one of the summary documents of

WCIT proposals to amend the International Telecommunications Regulations. In addition, at the recent meeting in Geneva, the Secretary General stressed that "all ITU members have full access to all WCIT-12 documents and can share them within their constituencies." The U.S. government continues to welcome all interested stakeholders to participate in our domestic preparatory process for the WCIT. Consistent with the ITU Secretary General's statement, we have made it clear that we will make all WCIT-12 documents available to any participant in our preparatory process who requests them in order to inform their guidance or advice to the U.S. government.

Questions for the Record Submitted to
U.S. Ambassador Philip L. Verveer by
Representative Henry Waxman
House Subcommittee on Communications and Technology
May 31, 2012

Question:

You acknowledged, during the May 31st hearing, that the public should be able to participate in the preparatory process in advance of the WCIT in December. How can the public provide input and gather information about this as we get closer to the conference? What is the U.S. doing to encourage public participation? What entities participate in the preparatory process for the U.S. delegation?

Answer:

The U.S. government welcomes all interested stakeholders to participate in our World Conference on International Telecommunications (WCIT) preparatory process and help the U.S. government form positions in advance of the conference. We solicit this input and feedback through the United States International Telecommunications Advisory Committee (ITAC). The ITAC process has been the critical instrument in ensuring open, public consultations with all stakeholders that helps develop our positions in advance of the WCIT. The ITAC process is well tested. It has advised the Department of State on U.S. participation in international telecommunications treaty organizations such as the International Telecommunication Union for decades. The ITAC continues to serve this

critical role for the WCIT. We welcome any person and any and all organizations, whether corporate or non-profit, to participate in the ITAC if they would like to assist with the WCIT preparatory process.

Second, all WCIT preparatory documents – including revisions of the TD-62 compilations of member states proposal, the final report of the Council Working Group, and member state proposals – have been and will continue to be made available to interested ITAC member. It is imperative that we ensure full consideration of a WCIT proposal's impact on the full range of issues, including economic growth, and the internet's openness. This is best done through the adoption of open and transparent processes that allow for wide consultation. Therefore, we will continue to share these WCIT documents with stakeholders so that they can provide informed views and help develop positions reflective of the core values and interests in the United States.

Hundreds of companies, NGOs, and individuals participate in our WCIT preparatory process.

Question:

In Commissioner McDowell's Wall Street Journal op-ed from February 21, 2012, he wrote that "pro-regulation forces are, thus far, much more energized and organized than those who favor the multi-stakeholder approach." Do you agree?

Answer:

The U.S. Department of State – along with the entire U.S. government – is actively engaged with our many global partners in a variety of international fora, including the International Telecommunication Union, and we are working effectively with all internet stakeholders to defend and strengthen the open, interoperable, secure, reliable, and innovative internet.

The Honorable Robert McDowell
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

The Honorable Greg Walden

1. What is your opinion of the real-world impact of the proposed economic regulations on U.S. Internet service providers, content companies, and Internet entrepreneurs?

The effects would be wide-ranging due to the chaos and uncertainty that new regulations would create. For instance, some of the proposals could ultimately force technologists to seek intergovernmental bureaucratic permission to innovate and invest. This, in turn, would effectively drive up research and development costs, deter investment and snuff out innovation throughout the expansive Internet market. The uncertainty created by a new regulatory regime would also increase costs as cross border communications traffic and cloud computing become more complicated and vulnerable to regulatory arbitrage as dictated by international political bodies. Ultimately, such costs are always passed on to the end user consumer in the form of more money out of their pockets and fewer innovative choices in the marketplace. *See* Michael Kende, *Internet global growth: lessons for the future* (Sept. 2012) (Kende Study) (located at: http://www.analysysmason.com/internet-global-growth-lessons-for-the-future).

2. How do you think imposing the proposed regulations on information security would affect developing nations? What about the proposed economic regulations?

As noted immediately above, any Internet governance regulations would cause great uncertainty and the effects would be wide-ranging. *See* Kende Study.

3. How would the FCC implement a settlement regime for international Internet traffic? How intrusive would the FCC's regulations need to be in terms of prescribing network traffic flow and corporate economics?

It is impossible to predict how the FCC would implement a settlement regime for Internet traffic. I hope the agency never would. Any additional rules would be prescriptive and would greatly upset the Internet marketplace. Of course I would oppose any effort to introduce new international Internet regulations. In fact, I did not support the FCC's December 2010 rules to regulate the Internet. I wrote a strong dissenting statement warning, among other things, that domestic regulation of the Internet would harm the United States' credibility on this matter internationally.

4. You have been an outspoken opponent of the efforts to assert control over Internet governance. Could you elaborate on the consequences of these proposals should they be adopted?

As noted above, any efforts to assert government control – either foreign or domestic – over Internet governance would cause great uncertainty and the effects would be wide-ranging. For instance, if countries opt out of the "multi-stakeholder" non-governmental Internet governance model of today and choose instead to follow a new path into intergovernmental regulation, a balkanized Internet would result. This would be devastating to global free trade, rising living standards, national sovereignty and the spread of freedom and democracy. Additionally, it would impair economic growth most severely in the developing world.

5. Aren't many of the proposals before the WCIT attempts to regulate the Internet as if it were an old-fashioned telephone service?

Yes.

6. Can regulation of the Internet, no matter how well intentioned, ever be flexible enough to permit the Internet to evolve and grow as well as it has under the multi-stakeholder model?

No. I oppose any and all efforts by the ITU, or any foreign or domestic governmental body, to regulate the Internet. It is worth noting that even if this effort is unsuccessful in December, we must continue to be vigilant. Given the value of what's at stake, namely global freedom and prosperity, not to mention the dedicated efforts by some countries, I cannot imagine that this matter will disappear. Similarly, I urge skepticism for the "minor tweak" or "light touch." As we all know, every regulatory action has consequences and regulations only seem to grow. We must remain vigilant for years to come.

7. Wasn't it when the U.S. government released its grip on the Internet that is began to grow exponentially into the Internet we know today? Isn't regulation of the Internet antithetical to the distributed architecture of the Internet, which is the very feature that has been responsible for its phenomenal success and growth?

Yes. Shortly after the Internet was privatized in 1995, a mere 16 million people were online worldwide. By the beginning of this year, approximately 2.3 billion people were using the Net. Internet connectivity quickly evolved from being a novelty in industrialized countries to becoming an essential tool for commerce -- and sometimes basic survival -- in all nations, but especially in the developing world. In fact, developing nations stand to gain the most from the rapid pace of deployment and adoption of Internet technologies. The effect that rapidly growing Internet connectivity is having on aspiring countries' economies is breathtaking. The Net is an economic growth accelerator. It contributed an average 1.9 percent of GDP growth in aspiring countries for a total of $366 billion in 2010. In some developing economies Internet connectivity has contributed up to 13 percent of GDP growth over the past five years. *See also* Kende Study.

8. Ambassador Verveer wrote in a blog post with Assistant Secretary of Commerce Lawrence Strickling and White House Deputy Chief Technology Officer Daniel Weitzner that "[c]entralized control over the Internet through a top-down government approach would put political dealmakers, rather than innovators and experts, in charge of the future of the Internet. This would slow the pace of innovation, hamper global economic development, and lead to an era of unprecedented control over what people can say and do online." Do you agree?

Yes. The Administration and I share a common point of view on this issue. I have been pleased to work with Assistant Secretary Strickling, former Chief Technology Officer Daniel Weitzner, Ambassador Phil Verveer and Ambassador Terry Kramer on this important matter.

The Honorable Anna Eshoo

1. In his written testimony, Dr. Cerf suggests that the ITU process should be more transparent and open to non-governmental stakeholders. Do you agree? If so, how can the U.S. government advocate for greater transparency in the ITU and UN processes?

Yes. As was discussed at the hearing, I fully support Ambassador Verveer's effort to advocate for greater transparency in the ITU and UN processes.

The Honorable Henry Waxman

1. Ambassador Verveer suggests that the existing ITRs have been accepted as a framework for negotiations and that there are no pending proposals to vest the ITU with direct Internet governance authority. Do you agree? Does this satisfy the concerns you have outlined about the ITU governance issues at the WCIT? If not, why not?

I do not agree. Certain parties, for instance, the European Network Operators Association (ETNO) and the Arab States, have submitted proposals that are, in fact, problematic. More generally, given the high profile, not to mention the dedicated efforts by some countries, I do not expect this matter to disappear. I urge skepticism for the "minor tweak" or "light touch." All regulatory actions have consequences – some positive and some harmful. The supporters of international Internet governance are encouraged and driven. I urge that we remain vigilant for years to come.

2. You wrote in your February 21, 2012 Wall Street Journal op-ed that "pro-regulation forces are, thus far, much more energized and organized than those who favor the multi-stakeholder approach." Has your opinion changed in the time since the op-ed was published?

Not entirely. Attempts to regulate the Internet sphere have rallied opposition here in the U.S. and internationally on a bipartisan basis. The Administration and I share a common point of view on this matter. As noted earlier, I have been pleased to work with Assistant Secretary Strickling, former Chief Technology Officer Daniel Weitzner, Ambassador Phil Verveer and Ambassador Terry Kramer on this important matter. Furthermore, my friend and colleague, FCC Chairman Genachowski, also has been working to raise awareness of this important issue.

I am further buoyed by the leading role played by the private sector, both for-profit and non-profit, not only domestically, but abroad as well. I am pleased to report that there are many entities of all stripes, including public interest groups, telecommunications companies, content providers, think tanks, Internet access service providers, non-profit Internet governance entities and network manufacturers standing together to help spread the message and educate policymakers across the globe. A solid diverse "coalition of coalitions" has grown, and our delegation has taken a firm position against Internet regulation. At the same time, given the high profile, we must all remain vigilant for years to come. The pro-regulation forces are still more organized and energized than those who prefer a hands-off approach to Internet policy.

Response to Additional Questions for The Record
Posed to David A. Gross
By The Honorable Anna Eshoo
United States House of Representatives
Subcommittee on Communications and Technology
"International Proposals to Regulate the Internet"
May 31, 2012

1. You represent a broad coalition of multi-national companies that have helped shape the Internet as we know it today. As I understand, the ITU is expected to address proposals dealing with international mobile roaming and Internet peering. Would these proposals have an impact on Internet content and what are the practical implications for companies who have a global following?

Peering

There have been some proposals that would regulate Internet peering agreements. In addition to proposals offered by European Telecommunications Network Operators group (ETNO), Paraguay, and the Arab States, we believe that other proposals may be made that could affect the costs and dynamics of peering, as well as to discourage innovative peering arrangements. By seeking to predetermine the terms, conditions, or outcomes of peering negotiations, these proposals would superimpose, either directly or indirectly, international or supranational regimes over what is currently a flexible system of non-regulated arrangements. Indeed, a 2011 study by the Packet Clearing House analyzed 142,210 peering agreements from 4,331 different ISPs across the globe and found that more than 99.5% of all peering arrangements are negotiated and executed without a written contract and without the need for top-down regulation.

Subjecting these established, informal processes to new regulatory mandates would add costs, slow innovation, and have a disproportionately negative impact on Internet users in the developing world. Imposing a "sending party network pays" regime, in particular, could be especially challenging.

International regulations that require content providers to pay based upon the number and location of users that access their content would likely be technically difficult or impossible. If implemented, such regulations could also lead content providers to limit access to their content to only the "free" markets, denying consumers in countries that adopt sending-party-pays regimes access to important Internet content. For Internet content producers that seek to serve people in the developing world, these policies could create barriers to entry that could prevent the growth of new Internet content providers, particularly in the developing world and in emerging languages on the Internet.

In addition to the detrimental effects of top-down regulation on innovation and the availability of international Internet content in developing countries, proposals that governments require specific terms and metrics in peering arrangements could be technologically unfeasible, and could represent a back-door way of subjecting peering arrangements to regulatory fiat. Ultimately, these regulatory requirements would create new opportunities for fraud, arbitrage,

and government-micromanagement of peering arrangements, and would increase the overall level of commercial uncertainty surrounding Internet content and services.

Roaming

There have been some proposals to impose international mobile roaming rate regulation. These proposals could have a substantial detrimental effect on consumers' access to Internet content, particularly in the developing world. Access to the Internet is increasingly mobile-focused. This is especially true in developing countries, where, in many cases, mobile devices provide consumers' only means of Internet access. Some of these countries have gone from little to no communications infrastructure to virtually ubiquitous, modern mobile wireless systems in a few short decades. The steadily increasing demand for data services and Internet content makes necessary significant additional build-out of wireless broadband infrastructure. Fundamentally changing the economics of the mobile Internet through the imposition of international mobile roaming rate or other regulations could materially affect in a negative way the pace of necessary facilities construction, the rate of innovation online, and the cost of domestic Internet services.

These problems could happen for a number of reasons. Decreasing international mobile roaming revenues for carriers in developing countries would limit the financial resources available to support infrastructure projects or other investments. Additionally, because revenues will be driven down artificially, rates for domestic service may increase to compensate for the shortfall. This decrease in infrastructure investment and increase in retail charges for mobile service could significantly retard the adoption of Internet access and could prevent the development of national markets for Internet content and services.

But even more fundamentally, international roaming services are relatively nascent applications subject to constant innovation and rapid evolution. These changes can be seen, for example, in the mobile industry's transition to even higher speed, low latency LTE services, with increasing reliance on broadband access to the cloud. Operators also are deploying other new network technologies such as small, localized cell sites, and employing Wi-Fi offloading and other techniques to address increased demand for mobile data, while containing costs. The changes this new, highly competitive mobile environment will bring cannot be predicted today. But what can be anticipated is that one-size-fits-all international regulatory rules to govern today's roaming services would, at best, quickly become obsolete, and, at worst, could impede infrastructure investment and innovation by freezing the industry into a business model and mindset that has no continuing relevancy for consumers or technology and thereby impeding the flow of information and growth of commerce globally.

August 28, 2012

Response of Vint Cerf, Vice President and Chief Internet Evangelist, Google Inc.
Before the House Committee on Energy and Commerce
Subcommittee on Communications and Technology

Hearing on "International Proposals to Regulate the Internet," May 31, 2012

The Honorable Anna Eshoo's Follow-Up Questions for the Record

1. **Can you provide some examples of the engineering-based decisions that ensure the seamless operation of the Internet today? What is the harm of having these technical decisions made under ITU regulation?**

Technical standards are the underpinnings upon which the Internet is based. At the Internet Engineering Task Force (IETF), technical standards are developed through a voluntary global consensus process. Anyone with the technical knowledge can participate in the IETF, and participants represent themselves and not their organizations, governments, or companies. This process ensures that, to the extent practicable, technical implications are considered and addressed before any new standard is fully adopted. This consensus-based process for standards development also ensures that critical Internet standards are universally implemented when needed — thereby preserving the Internet's global interoperability.

There are multiple concerns with the ITU's standards process. Among others, there are concerns that the ITU's process is neither open nor consensus-driven because it is largely closed to civil society and is driven primarily by governments and corporations that are sector members (and a membership fee is required to become a sector member). In addition, some member countries have used the ITU to propose standards that conflict with those developed through the IETF consensus process or with other standards that are currently in use. At other times, the ITU has tried to change substantially an IETF standard but failed to use the IETF's consensus-based process. These actions create substantial technical confusion and threaten global interoperability, which is necessary to ensure the seamless global flow of communications and commerce online. They also undermine the consensus-based, technical process that has worked so well.

2. **As I understand, cybersecurity and cybercrime have been cited as among the reasons for moving to an intergovernmental approach to Internet governance. How do we best tackle this global problem and is the current multi-stakeholder model already equipped to handle it?**

Cybersecurity is a serious concern, but a global cybersecurity treaty mediated by the ITU is not an effective response to the threat. Apart from the inflexibility of such a document in the face of the fast, sophisticated, and evolving nature of cyber-threats, there are some countries that could use high-level cybersecurity mandates as an internationally sanctioned way to justify increased limitations on free expression through Internet traffic and content filtering.

A better alternative would be to work towards government and private sector strategies to combat cyber-attacks. For example, governments should work bilaterally and, in some cases, multilaterally to create and enforce effective national laws to combat cyber-threats. In addition, industry best practices can be applied to deal with pressing issues like fraud and spam. In fact, a number of countries have already signed bilateral and/or multilateral treaties to counteract cybercrime, and a variety of organizations, including FIRST, Conficker Working Group, and many others, have been constituted informally to tackle cybersecurity issues outside the ITU context. This collaboration allows for a flexible global framework that can be modified as technology evolves.

August 28, 2012

Response of Vint Cerf, Vice President and Chief Internet Evangelist, Google Inc.
Before the House Committee on Energy and Commerce
Subcommittee on Communications and Technology

Hearing on "International Proposals to Regulate the Internet," May 31, 2012

The Honorable Henry Waxman's Follow-Up Questions for the Record

1. **In your written testimony, you state that "It's critical for the U.S. and other countries that have seen the positive impact of the Internet on their economies to highlight to ITU participants and other stakeholders the potential negative consequences of ITU regulation of the Internet on the world's economy." What more can the U.S. government do in this area? And what is the role for the private sector in this process?**

The U.S. government and key participants from industry, civil society, and the technical community are united in supporting a multi-stakeholder approach to the development of Internet governance conventions as the best way to address the technical and policy issues facing the Internet globally.

Governmental and private sector stakeholders can and should support and help improve existing multi-stakeholder organizations that address global Internet policy (*e.g.*, the Internet Governance Forum (IGF), the Internet Engineering Task Force (IETF), the Internet Corporation for Assigned Names and Numbers (ICANN)). Among other things, these stakeholders can support such institutions through participation and/or financial contributions; encourage these institutions to adopt measures to make it easier for a full range of stakeholders to participate, especially academic and civil society representatives and in particular representatives from developing economies; encourage these institutions to adopt open and transparent processes for selecting leadership and developing policy recommendations; and enhance opportunities for involvement of governments in multi-stakeholder policymaking (*e.g.*, through ICANN's Governmental Advisory Committee).

The Internet functions as a highly connected and interoperable global ecosystem — changes in one area impact the entire structure. It is paramount that the U.S. government promote and protect the current system by educating all stakeholders regarding the value of an open, globally interoperable Internet and how this value depends on the multi-stakeholder model for the implementation of global Internet governance. In addition, the U.S. government should continue its focus on developing U.S. policy that takes into account the technical design of the Internet and promotes the multi-stakeholder approach to global Internet governance. The House's action in passing H. Con. Res. 127, which makes clear U.S. policy promotes a global Internet free from government control, is an important milestone in that process. I hope the Senate will quickly adopt a similar resolution currently pending before it. Finally, the U.S. government should work with industry and other stakeholders to help build capacity across the globe in the areas of Internet policy development, deployment of broadband infrastructure, and adoption of broadband access.