

# The Committee on Energy and Commerce



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## Memorandum

May 5, 2014

To: Members, Committee on Energy and Commerce

From: Majority Committee Staff

Subject: Markup of H.R. \_\_\_\_, to Reauthorize the Satellite Television Extension and Localism Act of 2010, H.R. 4342, Domain Openness Through Continued Oversight Matters (DOTCOM) Act of 2014, and H.R. 3301, North American Energy Infrastructure Act.

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The Committee on Energy and Commerce has scheduled a markup beginning on Wednesday, May 7, 2014. The Committee will consider (1) H.R. \_\_\_\_, a bill to amend the Communications Act of 1934 to extend expiring provisions relating to the retransmission of signals of television broadcast stations, and for other purposes, (2) H.R. 4342, a bill to prohibit the National Telecommunications and Information Administration from relinquishing responsibility over the Internet domain name system until the Comptroller General of the United States submits to Congress a report on the role of the NTIA with respect to such system, and (3) H.R. 3301, North American Energy Infrastructure Act, which are summarized below.

On Wednesday, May 7, 2014, the Committee will convene at 4:00 p.m. in 2123 Rayburn House Office Building for opening statements only. It will reconvene on Thursday, May 8, 2014, at 10:00 a.m. in 2123 Rayburn House Office Building.

In keeping with Chairman Upton's announced policy, Members must submit any amendments they may have at least two hours before they are offered during this markup. Members may submit amendments by email to [peter.kielty@mail.house.gov](mailto:peter.kielty@mail.house.gov). Any information with respect to an amendment's parliamentary standing (e.g., its germaneness) should be submitted at this time as well.

### **I. H.R. \_\_\_\_, Reauthorization of STELA**

H.R. \_\_\_\_ extends the provisions in the Communications Act of 1934 that allow satellite providers to offer distant signals to consumers in areas unserved by broadcast signals, including "short markets," where one of the largest four national broadcast networks does not have an over-the-air affiliate. Specifically, the bill extends the provision that exempts providers from having to obtain retransmission consent for those signals. A complementary provision in the Copyright Act provides a compulsory copyright license that enables the satellite providers to retransmit those signals. Together, these two provisions provide access to network television signals to unserved households. To date, there are 1.5 million subscribers that rely on distant signals to access news and information via their satellite providers.

Additionally, this legislation makes targeted, pro-consumer changes to government involvement in retransmission consent discussions and includes language to relieve cable operators of the obligation to include CableCARDS in operator-deployed set-top boxes.

The Communications and Technology Subcommittee held a hearing on a discussion draft on March 12, 2014. The Subcommittee marked up and passed by voice vote a discussion draft of this bill on March 25, 2014.

## **A. Section-by-Section**

### **Section 1:**

Section 1 provides the short title of “\_\_\_.”

### **Section 2:**

Section 2 extends the exemption from retransmission consent for distant signals where a satellite subscriber is outside the area served by the broadcast signal. The section also extends the prohibition on exclusive retransmission consent deals and the requirement that broadcasters negotiate in good faith with multichannel video programming distributors (MVPDs).

### **Section 3:**

Section 3 prohibits multiple broadcast stations from negotiating retransmission consent jointly unless the cable or satellite operator agrees to joint negotiations or the stations are directly or indirectly under common control approved by the Federal Communications Commission (FCC or Commission).

### **Section 4:**

Section 4 prohibits the Commission from issuing rules to treat stations under shared service agreements, local news service agreements, local marketing agreements, or joint sales agreements as resulting in attribution to the media ownership rules until the Commission concludes its 2010 quadrennial review of the media ownership rules as required under Section 202(h) of the Telecommunications Act of 1996.

### **Section 5:**

Section 5 eliminates the so-called “sweeps week” provision that prohibits cable operators from dropping broadcast signals during the weeks when Nielsen Media Research does its major audience measurements (so called “sweeps” weeks). Since cable providers do not have a corresponding right to demand access to programming during a retransmission dispute, and satellite providers are not subject to the rule, the change will provide regulatory parity and remove the government from this aspect of the negotiation for signal carriage.

### **Section 6:**

Section 6 eliminates the regulatory requirement that cable set-top boxes leased from cable system operators contain a separate security element (the so-called “integration ban”).

Section 629 of the Communications Act, added as part of the Telecommunications Act of 1996, requires the FCC to foster a market for third-party set-top boxes – set-top boxes that could be sold at retail and used on any MVPD’s network. In adopting rules to comply with Section 629, the Commission required that the portion of the cable box that decrypts the cable signal be physically separated from the other functions of the box (“the separable security requirement”). The consumer electronics (CE) and cable industries developed the CableCARD, a module that could be deployed in third-party electronics (televisions or retail set-top boxes) to decrypt the cable signal for viewing via a third-party set-top box.

Later, the Commission adopted additional rules to apply this regime to both third-party boxes and those leased from a cable provider. This ban on integrating the security into the cable-owned boxes was intended to motivate cable systems to work with the CE industry by forcing reliance on a common technology. Today, of the more than 42 million CableCARDS deployed in set-top boxes, the vast majority of them are in leased boxes. TiVo, the most widely deployed retail set-top, accounts for only 600,000 CableCARDS.

#### **Section 7:**

Section 7 requires the Government Accountability Office to conduct a study and issue a report on necessary changes to the Code of Federal Regulations and the impact on consumers should Congress repeal the statutory compulsory copyright regime that governs broadcast content.

#### **Section 8:**

Section 8 requires each satellite direct broadcast service provider to report the local signals that it provides for each market in which it broadcasts such services and also report on the potential use of its technology for the retransmission of local signals in each market.

#### **Section 9:**

Section 9 defines the terms “appropriate congressional committees” and “Commission.”

## **II. H.R. 4342, Domain Openness Through Continued Oversight Matters (DOTCOM) Act of 2014**

On March 27, 2014, Representative John Shimkus, along with ten co-sponsors, released H.R. 4342, the “DOTCOM Act of 2014.” On April 2, 2014, the Subcommittee held a hearing on the announcement by the National Telecommunications and Information Administration (NTIA) regarding their intention to transition oversight of a part of the Internet domain name system to the international community. Officials from NTIA and ICANN testified, as well as a former United States ambassador to the ITU, and representatives from an Internet trade association and the public interest community. On April 9 and 10, the Subcommittee on Communications and

Technology met in open markup and favorably forwarded H.R. 4342 to the full Committee, without amendment, by a recorded vote of 16 to 10.

### **NTIA's March 2014 Announcement**

On March 14, 2014, NTIA announced its intention to transition its oversight of the Internet domain name system's root zone functions, performed by the Internet Assigned Numbers Authority (IANA), to the global multi-stakeholder community. The existing IANA contract between the U.S. government and ICANN expires in September 2015, although the contract provides for additional renewal periods.

In seeking proposals, NTIA requires that any acceptable proposal must garner wide community support, and must meet the following criteria:

- It must support and enhance the multi-stakeholder model;
- It must maintain the security, stability, and resiliency of the Internet DNS;
- It must meet the needs and expectations of the global customers and partners of the IANA services; and,
- It must maintain the openness of the Internet.

NTIA also stated that they will not accept any proposal that would replace its role with a government-led or inter-governmental organization solution. ICANN has been directed to work with the parties that are affected directly by the transition, as well as those who are familiar with the architecture of the Internet, including IETF, IAB, and ISOC.

The DOTCOM Act requires that any proposal considered by NTIA must be evaluated by the non-partisan Government Accountability Office to evaluate the proposal and identify potential consequences before NTIA may take action. By taking this sort of deliberate step within the government decision-making process, the United States is better able to ensure that the Internet remains open and free, a principle we have long supported. In a world where many seek to gain control of the Internet with ill intent, it is more important than ever that any successor solution be scrutinized so that NTIA does not allow a transition to take place that endangers the values we hold as vital.

#### **A. Section-by-Section**

##### **Section 1: Short Title**

Section 1 provides the short title of "Domain Openness Through Continued Oversight Matters Act of 2014" or the "DOTCOM Act of 2014."

##### **Section 2: NTIA Retention of DNS Responsibilities Pending GAO Report**

Subsection (a) prohibits the Assistant Secretary of Commerce for Communications and Information from relinquishing or agreeing to a proposal that relinquishes the responsibilities of NTIA over the Internet DNS functions until the Comptroller General submits the report required by subsection (b) of the Act.

Subsection (b) requires a report from the Government Accountability Office on the role of NTIA with respect to the DNS, including discussion and analysis of the implications of relinquishing the role, NTIA's criteria for proposals, the proposals received by NTIA, the processes used by NTIA and other agencies for evaluating the proposals, and any national security concerns raised by the relinquishment of NTIA's role. In addition, the report must include a definition of the term "multistakeholder" and any other terms necessary to understanding the report.

### **III. H.R. 3301, North American Energy Infrastructure Act**

On October 22, 2013, Chairman Fred Upton (R-MI) and Representative Gene Green (D-TX) introduced H.R. 3301, the "North American Energy Infrastructure Act." On October 29, 2013, the Subcommittee on Energy and Power held a hearing on the bill. On November 19 and 20, 2013, the Subcommittee on Energy and Power favorably forwarded H.R. 3301 to the full Committee, without amendment, by a recorded vote of 19 to 10. Specific provisions include the following:

#### **Section 1: Short Title**

Section 1 provides the short title of "North American Energy Infrastructure Act."

#### **Section 2: Finding**

Section 2 includes a congressional finding that the U.S. should establish a more uniform, transparent, and modern process for the construction and operation of oil or gas pipelines and electric transmission facilities for the import or export of oil, gas, or electricity to or from Canada and Mexico, in pursuit of a more secure and efficient North American energy market.

#### **Section 3: Authorization of Certain Energy Infrastructure Projects at the National Boundary of the United States**

Section 3 creates a new approval process for oil and natural gas pipelines and electric transmission facilities that cross the national boundary of the U.S. between Canada or Mexico. Requests for approval of cross-border oil pipelines must be submitted to Secretary of Commerce, natural gas pipeline requests must be submitted to Federal Energy Regulatory Commission, and electric transmission requests must be submitted to the Secretary of the U.S. Department of Energy (DOE). Within 120 days of being submitted, the requests must be approved unless it is found not to be in the national security interests of the U.S. The approval of these requests does not constitute a major Federal action for the purposes of the National Environmental Policy Act. For electric transmission facilities, approval is contingent upon compliance with applicable Electric Reliability Organization, Regional Transmission Organization, and Independent System Operator policies and standards.

No other approvals are necessary under any current Executives Orders. This approval process does not apply to any oil or gas pipelines or electric transmission facilities that (1) are operating across the national boundary at the date of enactment; (2) have previously received a Presidential Permit; (3) have previously been approved under this process; or (4) have an application pending on the date of enactment until the application is denied or until July 1, 2016.

No future approvals are needed under this process for modifications or changes of ownership. All other Federal statutes, including environmental laws and permits, continue to apply to a project for which approval of construction or operation is sought under this process. Definitions are provided for the terms “natural gas,” “oil,” “Electric Reliability Organization,” “regional entity,” “Independent System Operator,” and “Regional Transmission Organization.”

#### **Section 4: Importation or Exportation of Natural Gas to Canada and Mexico**

Section 4 repeals the requirement under section 3(c) of the Natural Gas Act that approval is needed from DOE for the export or import of natural gas to or from the U.S., Canada, or Mexico across the boundary of the U.S.

#### **Section 5: Transmission of Electric Energy to Canada and Mexico**

Section 5 repeals the requirement under section 202(e) of the Federal Power Act requiring an export authorization from DOE to transmit electric energy from the U.S. to a foreign country.

#### **Section 6: Effective Date; Rulemaking Deadlines**

Section 6 establishes a July 1, 2015, effective date for sections 3, 4, and 5. For the respective agencies responsible for carrying out the provisions in section 3, notices of proposed rulemaking are to be published in the Federal Register no later than 180 days after the date of enactment, and final rules are to be published in the Federal Register no later than 1 year after the date of enactment.

#### **IV. Conclusion**

Please contact David Redl or Grace Koh of the Committee staff with any questions regarding H.R. \_\_\_\_ or H.R. 4342. Please contact Tom Hassenboehler or Jason Knox of the Committee staff with any questions regarding H.R. 3301. Committee staff can be reached at 202-225-2927.