TESTIMONY OF AMB. DAVID A. GROSS

Thank you for the opportunity for me to speak with you today about the recent World Conference on International Telecommunications ("WCIT"). My name is David A. Gross and I had the great honor of serving in the Department of State as the United States Coordinator for International Communications and Information Policy from 2001 to 2009.

From December 3, 2012 until December 14, 2012, the world gathered in Dubai, United Arab Emirates, under the auspices of the International Telecommunication Union ("ITU") to attempt to revise the 1988 international telecommunications treaty known as the International Telecommunication Regulations ("ITRs"). I was pleased to attend that treaty-writing conference, WCIT, as a member of the U.S. delegation.

Before discussing some of the unfortunate aspects of the treaty negotiations, I would like to begin by noting there were many positive aspects to the treaty negotiations. Perhaps most notably, I was extraordinarily proud of the performance of the US delegation – from the top down. Ambassador Terry Kramer was our head of delegation. Although this was his first ITU treaty-writing conference, Amb. Kramer handled himself, the negotiations, and the delegation like a seasoned professional. His job was difficult not only because of the controversial nature of the subject matter, but also because of the size and diversity of our delegation. Amb. Kramer, together with the other delegation leaders including Amb. Phil Verveer, Dick Beaird, Assistant Secretary Larry Strickling, and other government officials from State, Commerce, the Federal Communications Commission, the Departments of Defense, Justice, and Homeland Security, as well as the private sector and civil society, did an outstanding job.

I was also pleased that the U.S. continued its long tradition of encouraging the active participation of the private sector and civil society on the official U.S. Delegation. The Delegation's various private sector, civil society, and academic members worked extraordinarily well together.

Led by the example of the amazing diversity of the U.S. delegation, I was very pleased by the fact that other countries – including many from the developing world – also included members of their private sector and civil society as part of their official delegations. This is a major, positive change for the ITU, made possible, in part, because the ITU's Secretary General, Hamadoun Touré, actively encouraged it.

Similarly, I was encouraged by the fact that the countries accepted that, for purposes of exchanging traditional international telecoms traffic, companies should use market-based, commercially negotiated agreements rather than government imposed rates. In addition, WCIT rejected the many different attempts to regulate international Internet networks and services, such as the imposition of routing and technical network management requirements. I was especially pleased that proposals to impose government regulations on international IP interconnection rates, as proposed by some in Africa and the Middle

East, were firmly rejected. Positive, consensus-based outcomes such as these are important not only to the U.S. consumers and companies, but also to everyone globally.

There were, however, many very troublesome aspects arising from WCIT, including the final revised treaty text that was signed in Dubai by 89 countries. Notably, many countries, including Russia, Saudi Arabia, China and others sought to use WCIT to establish new international rules through the ITU that would "govern" important aspects of the Internet. Although the most radical Internet-related proposals made by these countries were soundly rejected at WCIT, it is very troubling that the revised treaty seeks to create an Internet governance role for the ITU regarding "spam" and to provide international authorization for repressive governments to inspect the content of those Internet messages to determine if they can be blocked to solve so-called "network congestion" issues. Simply stated, these types of policy issues should not be resolved at the ITU.

Similarly, the WCIT Resolution regarding Internet governance that was adopted with the revised ITRs is strangely and grossly unbalanced in that it appears to reaffirm some aspects of the agreement adopted by the United Nations at the World Summit on the Information Society ("WSIS") in 2005, but not other important provisions. Perhaps that lack of balance is not really surprising as the Resolution was adopted at about 1:30 in the morning by a process that left many very experienced delegates very confused.

Perhaps most strangely, during the last minutes of WCIT, Iran was successfully able to call for a vote on the adoption of what I understand is an unprecedented treaty provision that creates, in the ITU's words, a "human right" for governments – not individuals – to access international telecommunications networks despite the imposition of international sanctions. Because human rights are well understood to involve providing rights to individuals, often at the expense of governments, such a provision turns the concept of "human rights" on its head by creating new rights for governments (not individuals) to avoid international sanctions that are often imposed to help individuals fight repressive governments. Such a provision alone should make the revised ITRs unacceptable to any thoughtful country.

Looking ahead, it is important to recognize that, although many believe that WCIT failed because 55 countries – including the United States, virtually all of Europe, and other Internet-leading countries such as Japan, Kenya and India – did not sign the revised treaty, in reality WCIT is an important early chapter in the critical global process of discussing the political and policy future of Internet networks and services – and in turn, the technical and economic future of the Internet.

I believe that it is important to recognize that the Internet's political and policy future should be shaped by American leadership – not just through traditional U.S. rhetoric about competition, private sector leadership, and "multi-stakeholder" decision-making, but by America's ability to "walk the talk" by showing unequivocally that the ideals we preach internationally are fully reflected in what we do at home. This is also why it is so important to guard against short term "solutions" such as withdrawing from some of

these international fora or materially reducing our economic support for international institutions that create great value for the American people. Instead, the U.S. should sustain and, in fact, increase its international engagement in light of the developing global dialogue on the important technological and economic issues discussed at WCIT and elsewhere.

American policymakers, in Congress as well as among our various Executive Branch and independent agencies, should continue to recognize that what we do domestically is watched and analyzed with great care by much of the rest of the world. For example, before the WCIT negotiations began in Dubai, Congress' remarkable action to pass unanimously resolutions on WCIT and Internet governance had an incredible and important impact. It was widely noted and recognized that Congress spoke with one voice in declaring that "the United States should continue to preserve and advance the multi-stakeholder governance model under which the Internet has thrived as well as resist the imposition of an International Telecommunication Union (ITU) mandated international settlement regime on the Internet." That statement, together with Congress' finding that "it is essential that the Internet remain stable, secure, and free from government control" had a profound impact on WCIT.

This action was important not only because of the substance of Congress' statements, but also because the world understood just how extraordinary it is for Congress to act with unanimity, especially in an era when Congress has a well-recognized problem reaching consensus on almost anything. At the end of WCIT, I heard from many foreign officials that they knew that the United States would not sign the revised treaty with its Internet-related provisions because Congress had sent a clear and unequivocal message that such an agreement was unacceptable to the American people.

Looking ahead, we must recognize the obvious – Internet policy issues affect virtually everyone in the world, and U.S. leadership depends on the power of its forward looking arguments, not just on the historical fact that the United States gave the world a transformational technology. Although establishing a global Internet policy that ensures that individuals, the private sector, and governments work together appropriately to create a safe, secure and sustainable Internet for everyone will be long, complex and challenging, we are fortunate that the United States has a well-established road map to follow.

We can continue to lead the world toward greater prosperity and the socially transformational benefits long associated with the Internet. But when we discuss domestically laws and regulations that affect the Internet it is important to recognize that other countries will look carefully at our decisions. We should be prepared for other governments to act based upon what we do – rather than what we say – when making decisions both for their own countries as well as internationally.

The test of our resolve and our policies will happen many times during the next few years. This May, for example, the ITU will host the fifth World Telecommunications/ICT Policy Forum ("WTPF") that is designed to focus explicitly on

Internet governance issues. Similarly, there will be events this year hosted by the ITU and UNESCO that will focus on WSIS+10 (a potentially major event to look at the WSIS outcomes on the tenth anniversary of that important UN heads of state summit). In addition, the Internet Governance Forum ("IGF") will be held in Indonesia this Fall, and there will be major debates regarding the Internet at the United Nations.

Perhaps most importantly, in less than two years the ITU's Plenipotentiary Conference will be held in Korea where the ITU's role regarding Internet policy will be not only hotly debated at another treaty-writing conference, but also there will be elections for a new Secretary General and a Deputy Secretary General to lead that important organization for at least the following four years.

Significantly, the revised ITRs adopted at WCIT-12 will not come into force for those countries that signed it until January 1, 2015. U.S. engagement at these international fora can be particularly important in the interim as the interpretations and implementation of that treaty and the issues discussed at the conference continue to develop.

Despite the difficulties and controversy surrounding WCIT, it is important to remember that the ITU continues to play an important role for both the United States and the rest of the world. Among other things, it plays an extraordinarily important role regarding spectrum – something that Congress has often recognized to be of the utmost importance to the United States. Similarly, it is important to recognize that the ITU is extraordinarily important to many other countries, especially developing world nations, and therefore it is an effective place for the United States government and others to listen to concerns, learn of opportunities, and to use (as we have in the past) as a platform to advocate for the values and positions that we hold dear.

Similarly, the IGF has become a remarkably effective forum for the discussion of Internet governance and other issues in a truly multi-stakeholder, non-decisional environment. The IGF's economic viability has always been uncertain and without new sources of funding its future is unclear. Because the United States has often advocated for multi-stakeholder forums such as IGF and because the IGF needs additional funding to make it a viable place for the developing world and others to gather to discuss these important Internet-related issues, I hope that United States can find sufficient sources to help the IGF.

Regardless of the venue, there is much work to be done to convince the world that our Internet vision benefits people regardless of where they live because it is a key to better lives globally. But as our experiences at WCIT demonstrated and as the long list of important upcoming global forums where Internet governance issues will be debated and decided makes clear, it is critically important that we work together – government, industry and civil society – to marshal our facts, hone our arguments, and to reach out to everyone to make our case for the future of the Internet. That process – with Congress' strong, unified support – must continue and be intensified.