

COMMISSIONER ROBERT MCDOWELL

Questions for the Record from the

February 5, 2013 Joint Hearing

“Fighting for Internet Freedom: Dubai and Beyond”

Attachment 1—Member Requests for the Record

During the hearing, Members asked you to provide information for the record. For your convenience, relevant excerpts from the hearing transcript regarding these requests are provided below.

The Honorable Ted Poe

1. So my question to you is, should there be, first, on one end and I am just asking for your opinion any consequences for countries that seem to want government control of the Internet, or not? And, second, a little more specific: how we can be prepared to communicate better to these the vast majority of countries, as Ambassador Gross has mentioned, that still haven't made up their mind.

So three questions: ITU procedure; any consequences; and what can we specifically do?

There are very real adverse consequences for countries that favor intergovernmental control of the Internet because ultimately a balkanized Internet will be created whereby it is partitioned between member states that chose to live under an intergovernmental regulatory regime and those member states, such as the United States, that chose to remain under the highly successful multi-stakeholder model. Such a regime would be devastating to global free trade and rising living standards. It would also create an engineering morass because such an expansion of rules would politicize engineering and business decisions inside intergovernmental bureaucracies. Such a complex system would make it increasingly impossible for entrepreneurs to be able to build and operate new cross-border technologies such as cloud computing. Moreover, those countries that would be the most severely impaired are in the developing world.¹ At the very least, this type of partitioned Internet will create an enormous amount of uncertainty and drive up costs for all Internet consumers.

A recent news article summed up the chaotic effects of a partitioned Internet. Note the Russian official's call for the U.S. to agree to international regulation of the Net to avoid fragmentation – a clever and cynical maneuver to turn arguments against Net regulation on their head:

The U.N. has no power to force the United States to adopt any Internet regulation, and the U.S. refused to sign the December treaty, along with 55 others countries. But if a large number of countries agree on regulations, the Internet could become fragmented, with very different rules applying in different regions of the world. “That becomes an engineering nightmare,” McDowell said. Russia has pushed hardest for international Internet regulation. “In the future we could come to a fragmented Internet,” warned Andrey Mukhanov, one of Russia's representatives to the U.N. conference, as the U.S. and many European countries declined to sign the treaty in December. “[Fragmenting] would be negative for all, and I hope our American and European colleagues come to a constructive position.” But by a “constructive position,” Mukhanov means one with international web regulation....Technology groups and companies like Google say that the regulations, while they often seem nice on the surface, give government the power to censor content.²

¹ See, e.g., Ken Banks, *In African Agriculture, Information is Power*, Nat'l Geographic (Sept. 5, 2011), <http://newswatch.nationalgeographic.com/2011/09/05/in-african-agriculture-information-is-power/>.

² Maxim Lott, *Internet Still Under Attack by UN, FCC Commissioner Says*, FOXNEWS.COM (Feb. 13, 2013).

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As the Administration prepares for the Plenipotentiary conference in Busan, Korea in 2014, our government, the private sector, civil society, and non-profits must redouble efforts to fight against attempts to impose more international control over the Internet. For example, all of these entities can work together leading up to and during the World Telecommunications Policy/ICT Forum in Geneva in May of 2013 to find new allies and demonstrate to them how successful an unfettered Internet is to the economy and the human condition throughout the world.

The Honorable Brad Sherman

Should we have done more to tell countries that, to use the language here in Congress, we are scoring the vote? That is to say, that those making other important U.S. foreign policy decisions are taking note of how countries vote at the ITU? Is that undue pressure or a demonstration of how important Internet freedom is?

Yes, the United States government should have done more to tell countries that we were scrutinizing the vote. The United States has a duty and a right to inform other ITU member states of its positions. Moreover, U.S. diplomats' work on behalf of Internet freedom has been bolstered by the fact that the U.S. House of Representatives and the U.S. Senate unanimously passed concurrent resolutions regarding this topic. Sending this message to other ITU members is not undue pressure. Rather, it is incumbent on our country to make sure its position is clear and firm: An unregulated Internet is a freedom-enhancing and borderless network of networks that is an essential tool for commerce – and sometimes basic survival – in *all* nations, but especially in the developing world.

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Attachment 2—Additional Questions for the Record

The Honorable Greg Walden

1. In his testimony, Mr. Feld asserts that "No one brought up Net Neutrality in Dubai." As part of the core delegation of U.S. Government employees, was this your experience?

This was absolutely *not* my experience. Mr. Feld’s statement is simply without merit. As part of the official U.S. delegation to the WCIT, I was an active participant in bi-lateral meetings in Dubai where the topics of “Net Neutrality” and Title II classification of Internet access services were raised by delegates from other countries. They noted that the U.S. is sending conflicting signals because it regulates the Internet domestically with its Net Neutrality rules but opposes proposals to allow the ITU to regulate the Internet.

2. The United Nations does have a place for countries to discuss governance of the Internet – the Internet Governance Forum. What are your thoughts on the IGF and how can the U.S. help develop the IGF as part of a true multistakeholder process?

I agree that the Internet Governance Forum (IGF) is an appropriate place for Internet governance to be addressed. The IGF is comprised of civil society, private sector, non-profits, governments and the ITU. It provides a forum for decision making through consensus and works in a bottom-up manner. Such a structure can be empowering for even the smallest of participants. In that vein, in order to improve the IGF’s multi-stakeholder process, it is imperative that we find ways to increase the participation of all interested parties, especially the participation of developing nations, who often lack funds and time to participate in the myriad of IGF meetings. If we don’t improve it, developing nations will turn to further increasing the power of the ITU instead.

The Honorable Anna Eshoo

As a way of paying for the expansion of broadband, some developing nations have suggested the use of telecom-style termination fees on Internet traffic. To counteract this effort, what tangible actions do you think the United States should take in working with developing nations to promote deployment and expand investment of broadband?

The United States government and private sector can work together to help educate developing nations about the importance of Internet freedom. Investment dollars always flow to where they are welcome. In this case, less regulation and taxation of broadband would result in increased investment, deployment and adoption which will grow economies throughout the globe. Furthermore, industry, non-profits and academia have been generous in providing resources to developing nations to help ensure that their citizens benefit from the use of Internet and its continued deployment. These efforts should continue and there should be a coordinated communications effort to ensure that developing nations realize the importance of such efforts and that it will not be possible to continue to make great economic strides if the Internet is not allowed to flourish without governmental control.

The Honorable Henry Waxman

Did you see any positive outcomes from the U.S. perspective resulting from the WCIT negotiations?

Yes. The fact that certain proposals were *not* adopted at the WCIT can be considered a positive outcome of the negotiations. For example, one of the proposals not adopted was a “sender party pays” proposal which would have required Web content providers to pay Internet service providers (ISPs) in other countries for the traffic sent over those networks. Unfortunately, however, proponents of such proposals will return in force at future negotiations and continue

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to advocate for their adoption. They are patient and persistent incrementalists and will pursue these additional proposals in all future negotiations. I am not optimistic about the outcome of the 2014 Plenipotentiary conference.