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## *The Committee on Energy and Commerce*

### Memorandum

February 1, 2013

To: Subcommittee on Communications and Technology  
Committee on Energy and Commerce

Subcommittee on Terrorism, Nonproliferation, and Trade  
Subcommittee on Africa, Global Health, Global Human Rights,  
and International Organizations  
Committee on Foreign Affairs

From: Majority Committee Staff, Committee on Energy and Commerce

Re: February 5, 2013, Hearing on “Fighting for Internet Freedom: Dubai and Beyond”

The Subcommittees will hold a hearing on Tuesday, February 5, 2013, at 10:30 a.m. in 2123 Rayburn House Office Building entitled “Fighting for Internet Freedom: Dubai and Beyond.”

#### **I. WITNESSES**

One panel of witnesses will testify:

Commissioner Robert McDowell  
Federal Communications Commission

Ambassador David A. Gross  
Former U.S. Coordinator for International Communications and Information Policy  
U.S. Department of State

Ms. Sally Shipman Wentworth  
Senior Manager, Public Policy  
Internet Society

Mr. Harold Feld  
Senior Vice President  
Public Knowledge

## **II. OVERVIEW**

The Internet has thrived because governments have refrained from regulating it, relying instead on a “multi-stakeholder governance model” in which non-governmental institutions recommend best practices with input from the public and private sector. Yet at the World Conference on International Telecommunications last December, a number of nations proposed bringing the Internet within the regulatory purview of the International Telecommunications Union, a United Nations agency. Buttressed by a unanimous congressional resolution defending global Internet freedom and the current multi-stakeholder model, the United States and 54 other nations refused to sign the treaty. Unfortunately, 89 of the 193 U.N. member nations did sign, and this is likely the start, not the end, of efforts to subject the Internet to international regulation.

This hearing will examine what happened in Dubai, what implications the treaty has for the Internet and the economic and social freedoms it fosters, and what steps can be taken to redouble international support for the multi-stakeholder model. The hearing will also examine legislation making it the policy of the United States to promote a global Internet free from government control.

## **III. BACKGROUND**

Many of the world’s nations went to Dubai from December 3-14, 2012, for the World Conference on International Telecommunications (WCIT-12). The WCIT-12 was billed as a routine update of the International Telecommunication Regulations (ITRs), a treaty adopted in 1988 to govern certain aspects of old-fashioned, international telephone service. On the agenda were provisions regarding the interconnection of phone networks, charges for completing international calls, and roaming terms for wireless subscribers using their phones abroad.

Because the ITRs were designed to regulate the world of international calling that existed in the 1980s, modern Internet traffic and networks fell outside their scope. Drafted and agreed to in Melbourne, Australia, the ITRs were conceived in an era when most countries still had monopoly, government-owned telephone providers. They are not well suited for application to the Internet, and organizers of the Dubai conference gave assurances that WCIT-12 would not address the Internet. In the lead up to the conference, however, a number of member nations attempted to incorporate Internet-related issues.

Countries such as China, Russia and Iran sought to add language governing unwanted messages (spam), miscellaneous “security” and “cybersecurity” issues, assignment of Internet domain names and addresses, and verification of users’ online identities. Other proposals sought to expand application of the ITRs from “recognized operating agencies”—telephone companies offering international telephone service to the public—to “operating agencies.” This could extend the ITRs to private and government networks. A proposal by the European Telecommunications Network Operators’ Association (ETNO) would have mandated “sending party pays,” a particular system of compensation for international Internet traffic, rather than allow parties to experiment with, negotiate over, and possibly compete based on different cost recovery and payment methodologies. Moreover, many member states objected when others sought, successfully, to add language to the ITRs preamble granting nations, not people, a right of access to international telecommunications services.

Some parties advocated regulation because they see a revenue opportunity through tariff-type rules to fund their own communications and non-communications objectives. Others advocated it because they want to control the flow of information. Although couched in terms of broadband deployment and cybersecurity, at bottom such proposals could be used by countries as excuses to impose economic regulation on the Internet, and possibly even to censor speech their governments find threatening.

Many in the U.S. government voiced reservations that these issues were outside the stated scope of the conference and would inappropriately expand the ITRs beyond traditional phone service into Internet regulation. To express its concerns, the Energy and Commerce Committee held a legislative hearing and marked up H. Con. Res. 127, a concurrent resolution introduced by Representative Mary Bono Mack supporting the multi-stakeholder model and opposing international attempts to regulate the Internet. The House of Representatives passed H. Con. Res. 127 on August 2, 2012, by a vote of 414-0. The Senate passed a nearly identical measure, S. Con. Res. 50, on September 22, 2012, by unanimous consent. The House agreed to the Senate version on Dec. 5, 2012, by a vote of 397-0.

As WCIT-12 drew to a close, however, the delegations were presented proposals that recognized an international regulatory role in the operation and governance of the Internet. While they did not include the ETNO proposal, they did include a version of the spam proposal as well as a modified definition of “recognized operating entity.” The impact of these changes is not yet clear.

Consistent with Congress’s resolution, Ambassador Terry Kramer, head of the U.S. delegation, opposed the expansion of the ITRs to Internet issues and the United States refused to sign the treaty. Fifty-four other countries—including Great Britain, Canada, Australia, New Zealand, Poland, the Czech Republic, Italy, Switzerland, Sweden, Denmark, Finland, the Netherlands, Greece, Japan, Kenya, Chile, Portugal, and Costa Rica—joined the United States either in outright refusing to sign the treaty or indicating they would need to consult with their governments. Eighty-nine countries did sign the new ITRs, which will take effect in January 2015.

#### **IV. DISCUSSION**

Governments’ traditional hands-off approach to the Internet has made it one of the largest drivers of economic and social freedom. By refraining from regulating, we have enabled the Internet to lower barriers to communication, promote free expression, spur investment and innovation, create jobs, increase commerce, and grow at a staggering pace. As a result, the Internet has launched technological, economic, and even democratic revolutions. The flexibility of the multi-stakeholder governance model allows the Internet to quickly evolve to meet the diverse needs of users around the world. This structure also prevents governmental or non-governmental actors from controlling the design of the network or the content it carries.

By starting to subject the Internet to international regulation, the WCIT-12 treaty potentially threatens this success. Citizens of signatory nations may find their access to the Internet and its benefits reduced within their country. To the extent that the Internet is a global

network, citizens of other nations also have something to lose, both in diminished ability to communicate with citizens in signatory nations and a potential drop in innovation that might otherwise have arisen out of those nations. U.S.-based companies doing business in those nations—either in providing or using Internet services—may also bear additional costs.

It is by no means too late, however. The new ITRs do not take effect until January 2015 and how signatory nations will implement them is not yet clear. This is the time to redouble efforts with our international allies to minimize any harm that may flow from these ITRs, to encourage other nations to refrain from signing on to them, and to rebuff additional attempts to expand international regulation of the Internet. Unfortunately, Dubai was the start, not the end, of such efforts. Indeed, they may resurface as early as May 2013 at the Fifth World Telecommunications/Information and Communication Technology Policy Forum in Geneva, Switzerland.

By explaining to other nations the economic and social harms that flow from increased international regulation of the Internet, we may be able to expand the coalition defending an Internet free from government control. Demonstrating how all nations can have a voice in the multi-stakeholder process, and facilitating additional participation by countries across the world, could increase momentum, not to mention make the Internet stronger.

Messaging is also important. The U.S. delegation has indicated that last year's congressional resolution was helpful in showing the United States' bipartisan, public and private sector resolve, as well as in garnering additional international support. For that reason, the Subcommittees will consider legislation at the February 5 hearing to make it the policy of the United States to promote a global Internet free from governmental control and to preserve and advance the successful multi-stakeholder model that governs the Internet. The language of the bill is based on the resolution that unanimously passed the House and Senate in 2012.

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*If you need more information, please call Neil Fried or David Redl at (202) 225-2927.*